YOUR RIGHTS

AN ASSAULTED WOMAN'S GUIDE TO THE LAW

When you are finished with this book, please pass it on to a friend or to your local women's shelter.

YOUR RIGHTS

An Assaulted Woman's Guide to the Law

BARBRA SCHLIFER COMMEMORATIVE CLINIC
IN CO-OPERATION WITH THE ONTARIO WOMEN'S DIRECTORATE

Please note: This book contains general information on the legal system, housing, immigration, welfare and Children's Aid, for women who have been assaulted or abused by their male partners. It is not intended to provide legal advice or replace the services of a competent lawyer.

The information in this book was up to date at the time of printing. However, laws and the court system are subject to change. It is important to consult a lawyer to get the most current legal advice available.

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I	**ABOUT THIS GUIDE**	12
II	**HOW TO USE THIS GUIDE**	12
III	**INTRODUCTION**	13
A	**What is Wife Assault?**	14
B	**How Does the Law Define Wife Assault?**	15
C	**If I'm Being Assaulted, What Do I Do?**	16
D	**Survival Tactics**	17
	1 Protection	17
	2 Where Can I Go?	17
	3 Should I Go to a Doctor?	17
	4 What Should I Take if I Leave?	18
	5 Can I Leave the Province?	19
	6 Making Notes	20
IV	**THE LEGAL SYSTEM**	21
A	**In Brief**	23
	1 What is the Legal System?	24
	2 What Does the Legal System Deal With?	24
	3 What is Criminal Law?	25
	4 What is Family Law?	25
	5 How Do I Use the Criminal and Family Law Systems?	27
B	**The Court System**	29

C Criminal Justice System 33
1 Introduction 34
a. Special circumstances for native women, racial minority and immigrant women, and women with disabilities 34
2 Laying Charges 37
a. What is a criminal charge? 37
b. What kinds of charges are there? 37
c. When are charges laid? 38
d. How are criminal charges laid? 38
e. When are the police involved? 38
f. When is a justice of the peace involved? 40
g. Can I drop the charge? 42
h. Can I be charged? 42
3 Arrest and Release 43
a. When will the police arrest him? 43
b. What happens after he's arrested? 43
c. What is a no-contact order, and how can it help me? 44
d. What if the police don't arrest him? 45
e. What is a summons? 46
4 The Investigation 46
a. Who collects the information the court will need? 46
b. What if the police don't collect all the necessary evidence? 47
c. Who will let me know what's happening? 48
5 Court Appearances 48
a. Do I need a lawyer? 48
b. Who is in the courtroom? 49

c. What are the court appearances? 52
d. What is a subpoena? 60
e. What should I do to prepare for court? 61
f. What if I refuse to testify? 62
g. What is plea bargaining? 62
h. How does plea bargaining work? 62

D Compensation 65
1 Can I Be Compensated for Being a Victim? 66
2 What is the Criminal Injuries Compensation Board? 66
3 Is There Any Other Compensation I Can Get? 67

E Family Law 69
1 Introduction 70
2 Getting a Lawyer 71
a. Do I need a lawyer? 71
b. How do I get a lawyer? 71
c. What if I can't afford a lawyer? 72
d. How do I get legal aid? 72
e. How should I deal with my lawyer? 74
3 Custody 77
a. What is child custody? 77
b. Do I need to get legal custody of my children? 78
c. Can I get custody of my children even if I leave without them? 79
d. What is joint custody? 79
e. What is co-parenting? 81
f. How does the judge decide who gets custody? 81

g. What if my child has been abused? 83
h. What is a custody assessment? 84
i. Who is the official guardian? 85
j. What is mediation? 85
4 Access 86
a. What rights does access give? 86
b. What kinds of access are there? 87
c. When will access to my child or children be ordered? 88
d. How are access orders enforced? 89
5 Support 90
a. What is spousal support? 90
b. Who is eligible for spousal support? 90
c. How is spousal support decided? 91
d. What is child support? 92
e. Who must pay child support? 92
f. How is child support decided? 92
g. What if he doesn't pay spousal or child support? 93
6 Exclusive Possession of Your Home 94
a. What is it? 94
b. Are the police involved? 94
c. Can I stay in my home? 95
d. How do I make an application for exclusive possession? 95
e. Does it matter if I'm married or unmarried? 96
f. Are there special difficulties for native women? 96
g. What if he returns or breaks in? 96

h. How do I enforce exclusive possession? 97
7 Restraining Order 97
a. What is a restraining order? 97
b. How do I apply for a restraining order? 98
c. When will the court issue a restraining order? 98
d. What protection does a restraining order give me? 99
8 Dividing Family Property 100
a. What is family property? 100
b. What property am I entitled to? 101
c. How do I apply for a division of family property? 102
d. Family property and native women 103
9 Separation Agreements 103
a. What are separation agreements? 103
b. How do I get a separation agreement? 104
10 Divorce 105
a. When can I get a divorce? 105
b. How do I apply for a divorce? 106

F Child Welfare 107
1 What is Children's Aid? 108
2 What Does Children's Aid Do? 108
3 Do I Have To Report Child Abuse? 109

G Welfare/Social Assistance 111
1 What Financial Assistance is Available to Me? 112
2 What Assistance Do Welfare or Family Benefits Provide? 112

3 When Do I Receive Welfare or Family Benefits? 113
4 Who is Eligible for Welfare or Family Benefits? 113
5 How Do I Apply for Welfare? 114
6 Can I Get Financial Assistance in an Emergency? 114
7 What If I Need an Interpreter? 115
8 Can I Get Welfare Without a Permanent Address? 115
9 Can I Get Financial Assistance if I'm Employed? 115
10 Can I Get Help if I Have Special Medical or Employment Problems? 116
11 What If Welfare Won't Give Me Financial Assistance? 116

H Housing 117
1 Where Can I Go in a Crisis? 118
2 Where Can I Get Permanent Housing? 119

I Immigration 121
1 Will I Be Deported if I Leave My Partner? 122
2 Will My Partner Be Deported if I Leave or Charge Him With a Crime? 122
3 What Will Happen to My Sponsorship if We Separate? 123

J Resources 125
1 Shelters and Crisis Services 126
2 Legal Services 132

K Appendix 135
List of Criminal Charges 136

YOUR RIGHTS

I ABOUT THIS GUIDE

THIS GUIDE HAS GENERAL INFORMATION about the legal system, housing, immigration, welfare and Children's Aid for women who have been assaulted or abused by their husbands or male partners. Because every assaulted woman has her own story and situation, the information we have provided is for general use. It does not replace talking to a lawyer.

Some women, such as women with disabilities, native women, women from racial minorities or women who don't speak English, may face special problems in getting the help and support they need. Your local women's shelter is often a good place to start in getting help.

There are a large number of problems women in abusive relationships have to deal with. This guide will review some of the ways to deal with those problems. You don't have to make all the decisions by yourself. There are a variety of services and groups in Ontario to help you.

II HOW TO USE THIS GUIDE

THIS GUIDE IS DIVIDED INTO TWO MAIN sections as they relate to the legal system in Canada – Criminal Law and Family Law. In each section, we deal with questions most commonly asked by assaulted women. These are issues you will have to consider when going through either the criminal or family systems. Skim the Contents to find the questions most related to your case.

INTRODUCTION

What Is Wife Assault?

WIFE ASSAULT IS ALSO known as *wife battering, wife abuse* or *domestic violence against women.* These refer to the physical, emotional and sexual abuse that women experience from their male partners.

Physical abuse may include things like

- hitting, punching, slapping, pinching, spitting, pushing, kicking, choking, arm twisting.

Emotional abuse may include things like

- threatening to hit, punch, slap or kill you;
- using insulting language about your appearance, habits, intelligence, friends or family;
- isolating you from your friends or family;
- checking up on you all the time;
- threatening to take your children from you;
- not allowing you to have things that are important or essential to you;
- destroying household furniture or personal items that are important to you;
- withholding food or money from you;
- threatening to throw you out of the house or have you committed to a psychiatric hospital.

Sexual abuse may include things like

- forcing participation in sexual activity that is uncomfortable or degrading;
- forced viewing of pornographic magazines or movies.

How Does the Law Define Wife Assault?

WHILE THE LISTS ABOVE describe acts of cruelty and violence and make up what we call *wife assault*, the law defines it differently. *Assault* generally refers to physical force or contact without your consent. Some assaults are more serious than others, and, therefore, some criminal offenses are more serious than others. Depending on how your partner attacked you, he could be charged with *assault*, *assault with a weapon* or *causing bodily harm*, or *aggravated assault*. Similarly, he could also be charged with *sexual assault*, *sexual assault with a weapon* or *causing bodily harm*, or *aggravated sexual assault*. Threatening to assault you is also an assault under the law even if the threat is made just by a gesture.

When the police investigate an assault, they usually look for signs of physical abuse. The police will seldom lay charges for other kinds of behavior unless it is very severe.

If I'm Being Assaulted, What Do I Do?

USUALLY, WHEN A woman is being assaulted there are many decisions she needs to make. She has to find ways of protecting herself and her children from her partner while trying to decide whether or not to leave him. Making the decision to leave is difficult, particularly when you have children and/or are unemployed. It's a very stressful and painful time. It can also be a frightening time since you may not know what the future holds for you.

When you decide to leave your partner, you may want to consider your legal as well as your housing and financial needs. This guide is designed to help you identify and understand the legal issues you will face when you leave your partner.

If you're a native woman living on a reserve in Ontario, there are many other considerations that may affect your decision to leave your partner. If you leave your reserve, you may lose rights normally afforded to band members by the band. You may also lose financial and/or other benefits available to you through the federal government. It's important that you discuss the implications of leaving your band or the reserve with knowledgeable band members and/or with a lawyer. She/he can assist you in seeking, for example, alternative financial assistance where it is required.

Survival Tactics

1 Protection

It's important to protect yourself. If you are being physically hit or threatened or are otherwise in danger, call the police right away. Dial 911 or the operator and tell them where you are and that you have been assaulted. The police can help protect you from the present danger, but sometimes this means you and your children may have to leave your home. The police won't always be willing to take your partner away.

2 Where Can I Go?

There are many shelters for assaulted women in Ontario. Shelters can give you and your children a safe place to go while you decide what you want to do next. The staff at a shelter can also give you useful information about the services and support available to you in your area.

If you feel you can't go to a shelter, you may want to go to a friend or family member. But keep in mind, it's often easier for your partner to find you at a friend's or a family home than at a shelter. This may be a factor to consider when you are deciding where to go. Also consider that friends and family may not be as experienced in helping you as those working in a shelter.

3 Should I Go To A Doctor?

If you have physical injuries, you should go to a doctor,

health clinic or hospital. It's important to have your injuries treated. It is also important to have records of your injuries for criminal charges and for some family law matters. Don't feel ashamed to tell the doctor or nurse that you got the injuries from your partner's abuse. It's important for them to know.

If you have been sexually assaulted and you think you might want to lay criminal charges, you should go to a hospital before you eat or drink anything or wash and clean up. This is because the doctor will have to collect evidence for the court. It's important to let the doctor know that you may want to lay criminal charges. This doesn't mean that you have to lay criminal charges.

4 What Should I Take If I Leave?

The most important thing is to ***make sure you and your children are safe.*** ONLY TAKE WHAT YOU CAN SAFELY.

If you want to keep your children with you permanently, it's better to take them with you when you leave. If there is any danger, get out and call the police to help you get the children. ***You have the right to take your children with you.*** If you can't take your children when you leave, it's important for you to see a lawyer immediately. This is discussed in more detail in the Custody section on pages 77-86.

If you have time, take as much as you can. Try to take the things you need most or that mean the most to you. If you remove furniture or other items that you and your partner both used all the time, make sure you don't sell, damage, or misplace them. Everything you and your partner have will be divided between the two of you at a later date. This is discussed in more

detail in the Dividing Family Property section on pages 100-103.

If you don't have much time, the following items would be useful to you in an emergency:

- legal documents:
  - deed, mortgage or lease for your home,
  - passport,
  - bank books,
  - charge cards,
  - identification such as OHIP, driver's licence, social insurance number,
  - birth certificates for yourself and your children;
- medication for you and your children;
- keys for your home, car and safety deposit box;
- clothes for yourself and your children;
- your child or children's favorite toy, book and/or blanket.

5 Can I Leave the Province?

You are free to leave the province at any time if you want. However, if you have children you can't leave that easily. There are a number of things you must consider before leaving. Your partner still has legal rights to his children after your separation until a court order changes that or unless he consents to let you remove your children.

You should also consider that there may be problems in getting legal custody of your children, support for yourself and your children, or getting family property if you leave the province. There may also be problems in getting welfare or support in the province you move to if you haven't recently been a resident of

that province. It's best to check with a lawyer or legal clinic before you leave to find out what problems there may be and what your rights are. If you don't have time before you leave, check with a lawyer or legal clinic in your new town as soon as possible.

6 Making Notes

It can be very useful to keep a diary or notes of the assaults and abuse you are suffering from. If you choose to leave or lay criminal charges at some point, these notes can be very useful to you, your lawyer and the police.

Notes will give the people helping you the information they require. Try to include dates, addresses, times, events, agencies or people you speak to.

If you are nervous that your partner will find your notes, leave them at work or with a friend or family member you can trust.

THE LEGAL SYSTEM

IN BRIEF

What is the Legal System?

THE LEGAL SYSTEM refers to the laws of Canada and of the province of Ontario, the courts (criminal and family), and all the people involved in law (like lawyers and judges). It also refers to the manner in which courts are run (the administration of the courts) and how laws are enforced.

What Does the Legal System Deal With?

AS AN ASSAULTED woman, you may come in contact with both the *criminal law system* and the *family law system*. These are two very different legal systems, and you use each of them for different things. Criminal law deals with the protection and safety of the public. Your partner's assault on you is a criminal offense and will be dealt with in criminal law. The family law system deals with those things which relate to a woman and man in a relationship, including children, money and property. The family law system does not deal specifically with your partner's assault and does not hold him accountable for it.

What is Criminal Law?

CRIMINAL LAW IS ONE area of the law which deals with protection of people and property. Criminal law is the same across Canada.

The police are part of the criminal law system. They enforce the criminal laws of the country. If they have charged your partner with assault, he will be put on trial in a criminal court. You will be a witness for the Crown attorney, who prosecutes the case. If your partner is found guilty of assaulting you, he will be sentenced. Sentences may include fines and/or jail terms.

How criminal law works will be explained in more detail in the Criminal Justice System section on pages 34-63.

What is Family Law?

FAMILY LAW IS A BRANCH OF another area of law known as *civil law*. Civil law involves disputes between two people, such as a landlord and tenant, an employer and employee, and married or unmarried spouses.

Family law relates to all the issues a family has to deal with. These issues include things like

- custody and access;

- support for yourself and your children;
- separation;
- property division;
- adoption of children;
- marriage and divorce.

Each province in Canada has its own set of family laws dealing with custody, support, and property. In Ontario, the main laws are the Family Law Act, the Children's Law Reform Act, the Child and Family Services Act and The Support and Custody Orders Enforcement Act.

Divorce is covered by the Divorce Act, which is federal legislation and, therefore, the same across Canada.

Family law applies to both married spouses (husbands and wives) and unmarried (common-law) spouses.

In Ontario, if you are married you can claim such things as custody, spousal and child support and equalization of property. Your rights to share in property don't depend on who actually bought the property or whose name it is in.

If you are not married but have lived with a man for three years or have a child together and live together, you have some of the same rights as a married spouse. You could, for example, get spousal or child support under the Family Law Act. You can also claim custody of your children. And you can apply to the court for a restraining order if your partner is threatening or violent.

The main difference between married and unmarried spouses is that if you are unmarried, you can't get a share of family property under the Family Law Act.

However, there are other ways of making a claim to family property where you feel that you have a right to share it. It's important when you end a relationship or are thinking about ending it, to talk to a lawyer or legal clinic to get the information you need and to find out what your rights are.

How family law works will be explained in more detail in the Family Law section on pages 70-106.

How Do I Use the Criminal & Family Law Systems?

THE CRIMINAL LAW SYSTEM begins the moment the police are involved. The police may try to protect you in several ways, but the best protection seems to come from laying criminal charges against your partner. If the police don't lay charges, you can. Once a charge is laid, your partner will be put on trial and if convicted, sentenced for the offense. The Crown attorney prosecutes the case. Your partner has his own lawyer to represent him. You, as the victim of the crime, are the chief witness in the trial, but you won't have your own lawyer. The Crown attorney is going to try to prove that your partner is guilty, but he is not your lawyer and doesn't represent you. It's important that you understand the Crown attorney's role and your own. This is discussed in the section on court appearances on pages 48-63.

The family law system can help you settle all your affairs, work out the terms of your separation from your partner and provide you with child or spousal support, possession of your home and equal property

division. The family law system can also determine your rights and your partner's rights to your children and can also provide you with some protection through a restraining order. By deciding your legal rights and obligations, the family law system can assist you in obtaining freedom from abuse and intimidation. It can also help protect you from your partner's attempts to remove your children from you.

The criminal law process may take anywhere from two or three months to a year. The family law process may take as much as two or three years, depending on how many disputes there are between you and your partner.

THE COURT SYSTEM

ONTARIO HAS TWO DIFFERENT LEVELS of courts, the Ontario Court of Justice and the Ontario Court of Appeal. The Ontario court is composed of the general division and the provincial division. All of these courts deal with both criminal law and family law. In addition, most family law matters in the Regional Municipality of Hamilton-Wentworth are heard in the Unified Family Court, which is unique to that region.

Court procedures vary from court to court. Procedures also differ in criminal and family law courts. Which court your criminal or family law case will be heard in depends on several factors. The following chart may give you a general idea of which court you will likely come in contact with:

CRIMINAL COURTS

Ontario Court of Justice		Court of Appeal for Ontario
Provincial Division	General Division	
•bail hearings •summary offense trials (lighter offenses) •preliminary inquiries (for more serious offenses)	•indictable offense trials (more serious offenses) •appeals from some decisions made in Provincial Division	•appeals from trial decisions made in the Ontario Court

FAMILY COURTS

Ontario Court of Justice		Court of Appeal for Ontario
Provincial Division	General Division	
•motions and hearings on custody and access, spousal and child support, restraining orders	•motions and trials on custody and access, spousal and child support, restraining orders and property division •divorces •appeals from some decision made in Provincial Division	•appeals from decisions made in the Ontario Court

Unified Family Court
(Regional Municipality of Hamilton-Wentworth only)
•motions and trials on custody and access, spousal and child support, restraining orders and property division
•divorces

CRIMINAL JUSTICE SYSTEM

Introduction

EVERY WOMAN HAS THE right to peace, safety and protection. You have the right to insist that the police lay charges against the man who is assaulting you. You have the right to use criminal law for your security and to ensure that justice is done where a criminal offense has been committed. The police and the criminal courts are partners in the criminal justice system. It's your right to expect that they will enforce your right to live without threats, coercion, intimidation and violence.

a. Special circumstances for native women, visible minority and immigrant women, and women with disabilities

Over the last few years, there has been an increased emphasis in Ontario on treating wife assault as a crime. However, much of our ability to stop wife assault depends on

- information about legal rights being available to native, racial minority and immigrant women, and women with disabilities;
- effective and sensitive law enforcement by police and courts;

- assaulted women being able to gain access to the police and the court system.

Native women, racial minority and immigrant women, and women with disabilities often face unique problems with the justice system.

Native women living on reserves may find various supports: from band councils who support wife assault initiatives; from First Nations constables who enforce criminal law on reserves; or from other women in the band who counsel and support assaulted women.

Native women living off the reserve in remote areas may have no access to law enforcement agencies, community legal services, justices of the peace or social services to help them escape their partners. Very few of these agencies provide services in aboriginal languages.

The most significant problem native women face with the police and criminal justice system, however, is that laws and law enforcement are not always applied even-handedly and sensitively to native people. The history of the treatment of native people by the Canadian criminal justice system causes native people to be hesitant and cautious when dealing with law enforcement agencies.

The criminal justice system has not shown sensitivity to native people's cultural values and approach to life. It has sometimes treated native people more harshly than non-native people. While native women who are assaulted need greater access to the protection of criminal law, it's probably a good idea to seek help from native advocates or counsellors who deal with wife assault cases when using the criminal justice system.

Racial minority and immigrant women often have

difficulty getting services or finding people who speak their language in the criminal justice system. In addition, racial minority and immigrant women face a lack of sensitivity and knowledge about their cultural circumstances. Cultural stereotypes and attitudes often cause violence in the lives of immigrant and racial minority women to be trivialized or accepted. Racial minority and immigrant women who are assaulted should contact community organizations or legal clinics to find culturally sensitive agencies that can help.

Women with disabilities also face negative stereotypes and attitudes within the criminal justice and social service systems. People with physical disabilities are often ignored and ridiculed or considered mentally incompetent when they seek help from professionals. Women with disabilities are often more vulnerable than non-disabled women because they cannot communicate with police or physically escape their abusers.

Women who are developmentally disabled often have difficulty finding individuals who are understanding and skilled in meeting their needs. Assaulted women with physical or developmental disabilities should contact community-based agencies that specialize in work with disabled people to get help in contacting criminal justice or social service professionals.

Laying Charges

a. What is a criminal charge?

Criminal offenses are defined and set out in the Criminal Code. Violations of the Criminal Code result in charges being laid for that violation. Being charged with a criminal offense is the first step in the criminal justice system. Criminal charges bring people before the courts to be tried for criminal acts.

b. What kinds of charges are there?

There are three kinds of criminal charges:

- summary offenses;
- mixed or hybrid offenses;
- indictable offenses.

Summary offenses are those crimes thought to be less serious, such as causing a disturbance in a public place. The procedure for summary offenses is more straightforward than for indictable offenses.

With *mixed* or *hybrid offenses*, the Crown attorney can choose whether the charge will be treated as a lighter offense (summary offense) or more seriously (as an indictable offense). The Crown attorney usually makes her/his decision based on the circumstances of the crime. Assault or sexual assault are examples of mixed or hybrid offenses.

Indictable offenses are more serious crimes. Assault

causing bodily harm, aggravated sexual assault and attempted murder are all examples of indictable offenses. The major difference between a summary offense and an indictable offense are the procedures followed in the court. Sentences for indictable offenses can often be more serious than for summary offenses. This is discussed in more detail in the Court Appearances section on pages 48-63.

If you have been assaulted or threatened, there are many different criminal charges that may be relevant.

c. When are charges laid?

Criminal charges can be laid when you have been

- physically assaulted;
- sexually assaulted;
- kidnapped or forcibly confined;
- your property stolen or damaged;
- your safety or life threatened.

d. How are criminal charges laid?

Criminal charges can be laid in two different ways. The most common way is for the police to lay the charge. The other way is for you to go to the justice of the peace and *lay an information* against your partner. Each of these ways of laying charges is explained in the questions that follow.

e. When are the police involved?

If you have been assaulted or are in danger, CALL THE POLICE IMMEDIATELY. Tell the operator exactly where you are (be as specific as possible) and that you are in danger.

Once the police arrive, they will begin to ask you

questions. This is the beginning of the police investigation. If your partner is still there, the police will also ask him questions. They will probably speak to each of you separately.

Police will lay criminal charges when

- they witness an offense; for example, an assault;
- there are "reasonable and probable" grounds to believe an offense has happened. The police decide whether there are reasonable and probable grounds by considering such things as injuries, evidence of a fight in the room, a witness or your word alone.

Unfortunately, sometimes police don't want to involve themselves in "domestic disputes." Here is a list of suggestions that may help you deal with the police.

- Ask to speak to the police alone.
- Ask the police to lay criminal charges against the person who assaulted you. If they decide not to lay charges, ask them to explain why. If they continue to refuse to lay charges, ask for their sergeant's name and phone number and call the sergeant.
- Sometimes police are unwilling to lay charges if they believe there is not enough evidence. If the police won't help you, you can still lay criminal charges before a justice of the peace. If you feel the police didn't respond to your case appropriately, you can lay a complaint against the police officers with the Police Complaints Commission. For further information about laying a complaint against the police, contact

your legal aid clinic, the police or Dial-A-Law (see Resources section on pages 132-134).

- Ask the police questions if you don't understand what they are doing. Write notes of what they say.
- Ask the police for their names and badge numbers. This can be very important information. Ask them to write their names and badge numbers down for you.
- If you wish, ask the police to take you and your children to the home of a family member, friend or a shelter for assaulted women.
- Ask not to have to talk to the person who assaulted you. It's best if you avoid arguing with him.
- Ask to be taken to a doctor or hospital if you have or suspect you have injuries.
- Ask for the names of services available to assaulted women in your area.

In addition to your rights, you have one major duty or responsibility. That is to be honest and straightforward with the police. Tell them what happened as clearly and simply as possible.

f. When is a justice of the peace involved?

If the police have refused to lay a charge or if the police were not called, you can lay a criminal charge as a private citizen with a justice of the peace. As previously stated, this is called ***laying an information***. Laying an information means swearing a statement about the assault.

Justices of the peace are also often called JPs and are located at the provincial courthouse or at a local

police department. Call either the provincial courthouse or the police to find out where the nearest JP's office is.

JPs are court officials, but they are not judges. They can lay a criminal charge, but they don't hold trials.

Call the JP's office before you go to make sure you have the right office. Also, ask what hours they are open to have criminal charges laid.

It's useful to write a few notes about the assault before you go. This will help you remember important details when you tell your story to the JP. It's also helpful to take photographs of your injuries after the assault. If there are witnesses to the offense, you can ask them to go with you, or you can take their names and addresses.

When you go to the JP, be as calm, clear and detailed about the assault as you can. If you think it would be helpful to have a friend or advocate with you at the time, feel free to bring that person along. Some shelters and rape crisis centres have advocates who will go to the JP with you if you want support. However, only you can describe the assault to the JP.

Once the JP has heard your story, she/he will have to decide whether a charge can be laid and if so, what charge is the best. The JP will then have the charge typed up and ask you to read it and swear that it's true. Be sure to read it carefully before you sign it and correct any mistakes.

If you do not understand the JP's decision, ask her or him to explain the decision and the reasons for it. If this still doesn't seem right, explain your concerns to the JP. If the JP refuses to lay a charge, it may be possible to go to a different JP on another day to lay a charge. Some JPs, like some police officers, are more

sensitive to assaulted women than others.

g. Can I drop the charge?

Once criminal charges have been laid by the police or a JP, only they or the Crown attorney (the lawyer who will prosecute the case in court) can withdraw the charges.

It used to be that police or Crown attorneys would drop charges if asked to do so by the victim. It's now their policy not to withdraw charges in cases of wife assault except in exceptional or unusual circumstances.

h. Can I be charged?

Sometimes abusive partners will threaten to lay *counter-charges* if they are charged. While it is possible for them to have police or a JP lay charges against you, it doesn't happen that often. Try not to be intimidated by these threats, and if you have a lawyer, let her/him know about the threats.

If you are charged, it is important to get advice from a lawyer as soon as possible. The section Getting a Lawyer on pages 71-77 gives more details about how to get one. Even though you know you are not guilty, it's important to take the charge seriously and to have a lawyer advise and represent you.

Arrest and Release

a. When will the police arrest him?

If the police lay the charge, they may arrest the man who assaulted you on the spot. They may also choose to investigate the matter and then arrest him later. Or they may decide not to arrest him at all but issue him a *summons* instead. A summons is an order to appear in court and is discussed on page 46.

A justice of the peace who lays a charge will only get the police to make an arrest if she/he believes you are in real danger. If you feel you are in real danger now or will be when your abuser finds out about the charge, ask the JP to have him arrested. More often, the JP will issue a summons for your partner to appear in court within a few weeks.

b. What happens after he's arrested?

If your partner is arrested, the police will take him down to the police station to *book* him. This means he is formally charged with the offense. Once the police have booked him, they may

- hold him in custody and he will be taken before a judge, usually the next day, for a bail hearing. He will be kept in the police jail, or "lock-up," until he appears at the bail hearing;
- release him with an *appearance notice*, which states a time and place where he must present himself to court to set a date for a trial.

The accused may also enter into

- a *promise to appear* (PTA) in court on a set date;
- a *recognizance*, which is much like a PTA, but if he does not show up in court, he may lose a sum of money.

c. What is a no-contact order, and how can it help me?

A *no-contact order* is an order made by a judge that your partner not communicate with or contact you in any way. No-contact orders are usually made after your partner has been arrested, at his bail hearing.

If the police have arrested your partner, find out what they plan to do about letting him go. If you believe that you may be in danger if he is let go, tell the police about your concerns. If the police are going to hold him overnight for a bail hearing, ask them to tell the Crown attorney about your safety concerns so that she/he can ask that certain conditions (a no-contact order) be placed on the accused.

You should consider what kind of no-contact order will give you the most protection. If you suspect that your partner may try to harass or intimidate you through his friends, ask the police (or Crown attorney) to stipulate that he shall have no contact with you, either direct or indirect. If you suspect that he may follow you around or sit outside your home, ask for an order stipulating that he stay a few kilometres away from your house, place of employment, child's school, etc. You know better than anyone what he's likely to do after he's released. Make sure the police know your fears.

There are a few other things you should keep in mind when you have a no-contact order.

- Your partner may not obey it. Don't rely on a no-contact order to ensure your safety. You may also want to do additional things to protect yourself, like going to stay at a shelter or with friends.
- The police are often not very good about enforcing no-contact orders. You may have to insist on their help.
- If you agree to let your partner have contact or communication with you when he has a no-contact order, you may lose your protection. The police may not help you if they think you've consented to contact before. Your partner may try to convince the police that you contacted him first and asked him to contact you.
- It's a good idea to call the police each time your partner violates a no-contact order. Keep a record of each violation and the occasions on which you called the police. Don't forget to make a note of the police division and the names of the officers who respond to you.
- You don't have to be assaulted to ask the police to enforce a no-contact order. Any contact is a violation of a no-contact order, and your partner could be arrested for that violation.

d. What if the police don't arrest him?

The police may decide not to arrest your partner even if they do charge him. They can choose to give him an *appearance notice* or a *summons*. Both of these order him to appear in court on a set date.

e. What is a summons?

A *summons* is a document that orders an accused to appear in court for a specific criminal charge.

A summons is the most common way a person is notified that he has been charged and that he must go to court.

A summons must be given to the accused in person or left with a responsible adult who will give it to him. This lets the court know the person charged has received notice of the charges against him. Be sure to give the JP or police any information you might have about where your partner may be found to ensure he is given the summons.

If the accused hasn't been served with a summons by the date originally set for him to go to court, then a new date has to be set by the JP. The summons will be *re-issued*.

The Investigation

a. Who collects the information the court will need?

The police collect all the information that is needed about the assault.

The police investigation begins with their first contact with you. The questions that they ask you and the man who assaulted you will form the backbone of the investigation. At some point during the investigation, the police may ask you to sign a statement.

Before you sign the statement, READ IT VERY CAREFULLY. Make sure it is correct and includes as many details as you think are important. You can ask the police to correct or change the statement before you sign it. You should ask the police for a copy of the statement you signed.

The police also collect

- relevant medical reports;
- statements from witnesses;
- photographs of your injuries;
- weapons that may have been used;
- any other evidence that is needed to prove the assault.

The police then prepare a summary of the case, including evidence they have collected, for the Crown attorney.

b. What if the police don't collect all the necessary evidence?

If you know of anything you think is important for your case that has not been collected by the police, bring it to their attention. They may have forgotten to get it, or they may think the evidence can't be used in court.

There are many rules about what evidence can be used in court. Many may seem unfair to you, but they are the rules of the court. For example, you might have photographs of your injuries from another assault that you want to give the police. Unfortunately, evidence such as the photographs of an earlier assault may not be allowed as evidence by the judge, but make sure the Crown attorney knows about any such evidence.

It is important that you talk to the police or Crown attorney about this evidence as soon as possible to give the police and Crown attorney enough time to prepare your case.

c. Who will let me know what's happening?

In Ontario, usually the police keep the victim informed about the progress of the investigation and court case.

Don't be afraid to call the police to ask what's happening. Make sure you know the name and badge number of the police officer who will be your contact about the case.

If you are moving, changing your telephone number or job, tell the police right away so they know where to find you.

Court Appearances

a. Do I need a lawyer?

Criminal charges are prosecuted by the Crown attorney, who is the government's lawyer. The Crown attorney isn't your lawyer, although it may sometimes seem that way.

Although you are the victim of the assault, in the criminal courts you are referred to as a "witness," "victim-witness" or sometimes "complainant." Complainants don't have their own lawyers. Your role as the Crown witness may make you feel upset or angry because you are also the victim of the assault.

Remember that you are important. Don't worry about asking the police or Crown attorney to explain anything that you don't understand.

b. Who is in the courtroom?

There will be many people in the courtroom connected to your case. Listed below is a general introduction to the people you can expect to see in court.

The judge: The judge is usually the centre of attention in a courtroom. She/he will sit on a high bench or seat at the front of the courtroom.

Provincial and district court judges are referred to as "your honour." Supreme Court judges are referred to as "my lady" or "my lord." You can also address judges as "ma'am" or "sir."

Even though the lawyers ask you the questions, you should tell your story to the judge (or jury, if there is one), since it is the judge (or jury) who will decide if the accused is guilty or not.

The judge is also responsible for making sure the rules of the court are followed. The judge decides what evidence is allowed, what kind of questions can or cannot be asked by the lawyers and when there will be coffee or lunch breaks.

Only lawyers and court officials have to bow to the judge in court, but everyone must stand up when the judge comes into or leaves the courtroom.

The jury: A jury is only involved in trials of indictable offenses where the accused has chosen to have a jury. A jury is made up of 12 (or sometimes 10) people from the community. The jury is selected at the beginning of the trial.

The jury decides if the accused man is guilty or not guilty of the offense.

No one can have any contact with members of the jury during the trial. After the trial, members of the jury are not allowed to discuss what went on in the jury room.

The court clerk and court reporter: Two people sit below the judge's seat. These are the court clerk and court reporter. There may be more than two people doing these jobs in busy courtrooms.

The court clerk makes sure all important decisions are written in the court file, marks all the exhibits entered as evidence, reads the charge to the accused and swears in (or affirms) the witnesses.

The court reporter is responsible for making sure everything said in court is recorded. In most Ontario courts, the court reporters hold a "cup" over their mouths. This allows them to dictate into a tape recorder. The record the court reporter makes is sometimes typed into a transcript of the case.

The Crown attorney: Crown attorneys are the lawyers representing the government. They are responsible for prosecuting the charge against the accused and must provide the court with all the credible and relevant evidence about the offense. Sometimes they are called "the Crown" or "the prosecutor."

The defence lawyer: The defence lawyer represents the man who assaulted you. Some defence lawyers are tougher in their defence of their clients than others. Always remember the defence lawyer is representing

the man who assaulted you, not you. It's generally not a good idea to talk to the defence lawyer. You have the right to refuse to answer her/his questions or help her/him before the trial. If the defence lawyer is bothering you before the trial, let the police or Crown know.

Before your case is called, the defence lawyer may be sitting in the courtroom or waiting outside. If you do now know who is representing your partner, be careful what you say around the courthouse. The defence lawyer could overhear something you say that might hurt your case.

The accused: The man who assaulted you is referred to as "the accused" until he is proven guilty.

The accused will be sitting in the courtroom, usually next to his lawyer. This can be upsetting when you are testifying. Try to look at someone you know, the judge or the Crown attorney. If the accused threatens you or makes threatening gestures, be sure to tell the Crown attorney or police immediately.

The accused has the right to be present throughout the trial and hear all witnesses testify. He can testify himself, but he doesn't have to.

Don't be surprised if the accused looks better than you have ever seen him. Often defence lawyers will make sure their clients look very respectable for court.

You: Even though you are the victim of the assault, you are considered to be a Crown witness for the purpose of the criminal courts.

Before your case is called, you can sit in the courtroom to see what goes on or you can wait outside. Once your case is called, you may have to leave the

courtroom if there are any witnesses before you.

Other witnesses: Other witnesses, if there are any, will be treated much the same way.

Police will seem at home because they are used to being in court.

You should not talk to any witnesses in your case about your own or their testimony during the trial.

The public: A courtroom is open to the public. There may be people from other cases in and around the courtroom as well as people just sitting in on the court sessions.

You may find it useful to sit in on a trial before your case is heard to see how things work.

The media: Newspaper, radio or television reporters may be in the courtroom.

Like any other member of the public, reporters have a right to be in the courtroom, although there may be limitations on what they can report.

Often the judge will order that what happens at bail hearings or preliminary hearings can't be reported. This is called a ban on publication. It is almost impossible to get a ban on publication of a trial or sentencing hearing. However, in cases of sexual assault, the judge must order that the victim's name or information identifying the victim not be reported, if such an order is requested by you. You should ask the Crown attorney to request an order banning publication of your name, if you want.

c. What are the court appearances?

The criminal process can be complex. There can be

many different court dates for a criminal charge. It's often a good idea to keep a record of those dates so you can keep track of what's happening.

There can be adjournments or delays at each step of the process. Adjournments will make the case much longer. It may be many months between the time you were assaulted, the end of the trial and the sentencing.

These are the various court appearances you may have:

The bail hearing: If the accused has been held in police custody, the first court appearance will be a bail hearing.

The bail hearing is to decide if the accused should be let out of jail before the trial and if so, what conditions should be put on his release. The accused will be held in custody until trial if the judge thinks that

- there is a strong reason to believe that the accused won't appear in court for the trial;
- the accused is likely to commit another criminal offense if he is released.

If the judge thinks the accused will show up for future court dates and can be safely released, then the judge will release him. If the accused is released, he will have to enter a *recognizance* or a *promise to appear*. These have been explained on page 44. The judge may also make the accused have *sureties*. Sureties are people who agree to pay the court a set amount of money if the accused does not show up for his trial.

It's usually not necessary for you to go to the bail hearing. However, if you want to see what happens, you are free to go to the hearing. If you feel that the man who assaulted you shouldn't be released, or

should only be released on certain conditions, make sure the police know how you feel before the hearing. Ask the police to tell the Crown attorney. If you are concerned that information may not be passed on or that the accused might plead guilty at the bail hearing (see last paragraph), it may be worth going to the bail hearing to make sure the Crown attorney has all the information.

If the accused has a serious criminal record, a history of not appearing for trials, a psychiatric history or is out on bail on an indictable offense, he is more likely to be held in custody. Otherwise, courts are more likely to release the accused on bail.

It's not common, but sometimes an accused will plead guilty and be sentenced at the bail hearing. Sentencing is described on pages 58-60.

Psychiatric remand: If there is evidence that the accused is mentally incompetent, he may be sent to a psychiatric hospital for observation.

Psychiatric remands are not common. If the person who assaulted you is sent on a psychiatric remand, ask the Crown attorney or police to explain what it will mean for your case.

The set date: If the accused is not in custody, his first court appearance will be the set date.

The set date is just that – a date to set the date for the preliminary hearing or trial.

If the accused is in custody, the set date may be combined with the bail hearing or it may be held a few days or a week after the bail hearing.

If the accused is going to have a lawyer defend him, he must have hired his lawyer by the set date. If his

lawyer is not available, the accused will be given a new date to come back to court for another set date.

It's possible, but not common, for the accused to plead guilty and be sentenced at the set date.

It's not necessary for you to attend the set date. However, if you want to go and see what happens, you can. The Crown attorney at the set date isn't always the Crown attorney who will be handling the preliminary inquiry or trial.

The police should notify you of the date set for the trial. If they don't call you right away, you can call them. You can also call the provincial court criminal registry to get the date for the accused's next court appearance.

The preliminary inquiry: Preliminary inquiries (or "preliminaries" or "prelims" as they are often called) are only held for indictable offenses (see pages 37-38).

A preliminary inquiry is very much like a trial. But instead of deciding if the accused is guilty or not guilty, the judge decides if there is enough evidence for a trial. In almost all cases, a trial is ordered at the end of a preliminary inquiry.

You may not find out if a court hearing is a preliminary inquiry or a trial until you show up in court on that day.

There are some differences between a trial and a preliminary inquiry, but your role as witness will be very much the same. At a preliminary inquiry, you will have to give evidence just like at a trial.

You should be notified about the preliminary inquiry date by the police. You should also get a *subpoena* to testify. Subpoenas are explained on pages 60-61. It's usually a good idea to ask for a meeting with

the Crown attorney before the preliminary inquiry to go over what will happen in court and review the case.

These meetings may take place just before you go to court for the hearing.

The trial: The purpose of the trial is for the judge to decide whether the accused man is guilty "beyond a reasonable doubt" of the assault he is charged with. In an indictable offense, there may be a jury and a judge.

It's possible that the man who assaulted you will decide to plead guilty, in which case you will not have to testify. His plea will be accepted and the judge will then sentence him. We deal more with the topic of *plea bargaining* on pages 62-63.

The trial will go as follows:

- The court clerk calls your case. The Crown attorney and defence lawyer introduce themselves to the judge.
- The court clerk reads the charge to the accused and asks if he is pleading guilty or not guilty. Once a plea of not guilty is made, the trial begins.
- The Crown attorney leads off the case with her/his evidence. Often you will be the Crown attorney's only witness, so you may be called to the witness stand right away. If you are not the first witness, you will be asked to leave the courtroom until you are called to testify. If you do leave the courtroom, stay close by so that you can return quickly when you are called to testify. Things to do to prepare for court are dealt with on pages 61-62.
- When you get called to testify, you will be "sworn in" (or "affirmed" if you prefer not to

swear on a Bible). The Crown attorney will ask you to describe what happened. This is called *examination in chief* or *direct examination*. In direct examination, the Crown attorney can only ask you very general questions like "Please tell us about what happened to you."

- After the Crown attorney has finished her/his direct examinations, the defence lawyer will start to ask you questions. This is called *cross-examination*. Questions in cross-examination can be a lot more detailed and specific than the Crown attorney's questions.
- Once the defence lawyer finishes cross-examining you, the Crown attorney may ask you a few more questions to clarify things. This is called *re-examination*.
- When the Crown attorney has presented all the witnesses for his/her case, they "rest their case."
- The defence lawyer now has a chance to present the witnesses for the accused. The man who assaulted you doesn't have to testify. If he does, it may be hard for you to sit and listen to what your partner says in his testimony. Stay calm and don't say anything inside the courtroom. You may choose to leave the court if listening to defence witnesses is too upsetting for you.
- Once the defence lawyer has finished with her/his direct examination of defence witnesses, the Crown attorney gets to cross-examine these witnesses.
- After all the evidence has been presented, both the Crown attorney and the defence lawyer can make a closing statement called a *summation*.

This gives them a chance to review the case for the judge or jury, if there is one.

- If there is no jury, the judge may choose to take a brief break, or "recess," to decide whether the accused is guilty or not guilty. If there is a jury, the judge will "instruct" the jury on what points they should consider in deciding if the accused is guilty or not guilty. The jury will then leave the courtroom to make their decision. The court will be called back when the verdict is to be announced.

If the judge or jury decides the accused is not guilty, don't blame yourself. There may be any number of reasons why the judge or jury decided he was not guilty. It doesn't mean you were not assaulted; it simply means the accused was found not guilty in the courts. It's natural for you to find this frustrating and upsetting. Talk to the Crown attorney to find out why this happened, and ask if there is any chance of the Crown appealing the decision.

The Crown attorney or the defence lawyer can sometimes appeal the verdict or the sentence to a higher court. There must be legal reasons to appeal a verdict or sentence.

The sentence hearing: Sentencing can happen at different times in the court process, but most often it happens after the accused has been found guilty at the trial. He will then be referred to as "the offender."

At the sentencing, both the Crown attorney and defence lawyer will make "submissions" to the judge about what they think the sentence should be. These submissions will be based on different factors, including

- the offense;
- what actually happened;
- the accused man's character;
- his chances for rehabilitation;
- the impact of the assault on you and/or your children.

The Crown attorney may have asked you about the impact the assault had on you or asked you to fill out a form about the assault. This is called a ***victim impact statement***. The victim impact statement is a chance for you to let the court know how the assault affected you. It's important for you to include as much as possible about how the assault has affected your life in the statement. However, remember that anything you write may be read out loud in the courtroom or shown to the defence lawyer and the accused.

Once the judge has heard from both the Crown attorney and the defence lawyer, she/he must decide what the right sentence is. In most cases, the choices are

Discharge: Either an ***absolute discharge*** or a ***conditional discharge***. Discharges are usually only given for a first offense. If an absolute discharge is granted, the accused will have no criminal record.

If a conditional discharge is granted, the man will have no criminal record as soon as all the conditions are met. Conditions may be, for example, that the man get counselling or not contact you for a set period of time.

Suspended sentence: Means that the passing of sentence is "suspended," or stopped, for a set period of time. The offender is given a period of probation with

conditions similar to the ones set under discharges. If the offender breaks one of the conditions or appears in court for any other criminal charge during that time, the judge can then pass sentence again on the first suspended sentence as well as on the new charge. Also, the offender could be charged with "breach of probation," which is also a criminal charge.

Fine: The judge can order the offender to pay a set amount of money to the court or to a community agency. The judge can't order the fine to be paid to you. (See pages 66-68 about getting compensation.) If the fine is not paid, the accused will usually have to go to jail for a short period of time.

Imprisonment: The judge can send the offender to jail. The Criminal Code sets a maximum sentence for offenses, and the courts have made other guidelines for jailing people on some charges. The judge may also order that the offender serve his jail sentence on weekends and/or nights. No matter what jail term is set, the offender will most likely not serve his complete sentence.

You should have some input concerning the terms and conditions of the man's release so that you, your children and family are protected.

d. What is a subpoena?

A *subpoena* is a document from the court ordering someone to appear in court for a case.

You and all other witnesses should receive a subpoena for the preliminary inquiry and the trial. Sometimes subpoenas arrive late. You don't need a subpoena to go to court, although sometimes your employer will insist

on getting a subpoena to give you the time off.

If you receive a subpoena, you must go to court unless the Crown attorney says you don't have to go. Sometimes defence lawyers will tell you that you don't have to show up, even when you have a subpoena. Always check with the Crown attorney or police first.

If you have been served with a subpoena and don't go to court, you may be arrested and kept in custody until you testify. Usually, if this happens you are released on bail or on *recognizance* (see page 44).

e. What should I do to prepare for court?

Spend some time before the preliminary inquiry and/or trial and go over what happened. It might be helpful to make notes so you can put your testimony together in the right order.

The judge or jury will want to know what happened on the day of the assault. Try to limit yourself to the details of what happened during the assault. Don't leave out important details.

It's not necessary for you to remember every little detail. If you don't remember something, be honest about what you do and don't remember.

You might find it useful to go to the court and sit in on a trial before you have to go to court for your case.

A few days before court, think about what you will wear. Remember to wear clothes that look good but not too fancy. It's also important to wear clothes you will feel comfortable in because you may have to be in court all day.

If you think you would feel more comfortable going to court with someone, make arrangements as far in advance as possible. It's often a good idea to have a supporter in court who can be there for you when you

are testifying, have lunch with you, chat while you are waiting and generally help you get through the day. Take a while to think who would be best at making you feel easiest. It may not be the person you are closest to but may be someone you met at a shelter or a friend from work or school.

Going to court isn't easy, but try not to worry too much about it. You are there to say what happened to you, and you have the right to be there.

f. What if I refuse to testify?

You could face charges of contempt of court if you refuse to testify.

If the judge or Crown attorney choose to, they can lay criminal charges against you, and you will then face a trial.

If you are planning on either not showing up in court or not testifying, it would be a good idea to talk to a lawyer or legal clinic beforehand to find out what is likely to happen.

g. What is plea bargaining?

Plea bargaining means the accused agrees to plead guilty to a charge usually in exchange for a sentence that has been agreed to by the Crown attorney and defence lawyer. Often his guilty plea is to a less serious charge than the original one; for example, pleading guilty to assault instead of assault causing bodily harm.

h. How does plea bargaining work?

Once a plea bargain has been suggested, both you and the accused will be consulted.

You may only be consulted moments before the trial

is about to begin. If you don't agree to the plea bargain, the Crown attorney probably won't go ahead with it, but they have the right to do so.

If the accused doesn't agree, the plea bargain won't go ahead because it's his trial.

A plea bargain can sometimes be good for you because it also means you won't have to testify. The accused will be found guilty. However, if you want the chance to tell your story or if you feel the proposed sentence or charge isn't serious enough, the plea bargain may not be right for you.

You have the right to say what you really feel. Don't agree to the plea bargain just because you think the Crown attorney, your family or friends want you to.

COMPENSATION

Can I Be Compensated for Being a Victim?

YES. WHETHER OR NOT you choose to lay criminal charges or whether or not he was ever convicted of the assault against you, you can apply to the Criminal Injuries Compensation Board as a victim of crime. You can also sue the man who assaulted you for damages in the civil courts.

What is the Criminal Injuries Compensation Board?

THE CRIMINAL INJURIES Compensation Board is a government- funded agency that operates in much the same way as the Workers' Compensation Board. The program operates with the belief that the public has a duty to compensate victims of criminal acts.

Although awards made by the Criminal Injuries Compensation Board are not as large as awards made by the civil courts, the way you receive awards is much simpler and there is no cost involved in applying for compensation.

For details on the program and for application

forms, contact the Criminal Injuries Compensation Board, 439 University Avenue, Toronto, Ontario M5G 1Y8, telephone (416) 965-4755.

You must apply for criminal injuries compensation within one year of the assault. In some cases, this period can be extended. You should contact the board as soon as possible after your assault for information and application forms if you think you want to apply.

The law governing this compensation is the Compensation for Victims of Crimes Act. You can get a copy of this act from the Criminal Injuries Compensation Board.

Is There Any Other Compensation I Can Get?

IF YOU PREFER, YOU CAN sue your partner for damages resulting from the assault. While it's possible both to claim compensation from the Criminal Injuries Compensation Board and to sue the man who assaulted you, you can't keep the money you get from both places. If you are successful in getting money in a civil suit, the Criminal Injuries Award will be reduced by the same amount.

Suing someone in civil court is usually only a good idea if the person you are suing has enough money to pay you. If you want to sue your partner, you will need to talk to a lawyer. How to get a lawyer is dealt with on pages 71-72. Civil suits are fairly complicated procedures. Unless you go through small claims court, civil suits can also cost a lot of money and take a long time to complete.

If you are involved in family law matters with your partner, speak to your family lawyer about including a claim for compensation for the assault with your other claims.

There are strict limitation periods for suing someone. At present, you must sue someone who assaulted you within four years of when the assault took place. Consult with a lawyer immediately if time is running out.

FAMILY LAW

Introduction

FAMILY LAW DEALS WITH ALL legal issues that relate to being in a relationship as a spouse or parent. Family law doesn't deal with things like your partner's abusive behavior and doesn't hold your partner responsible or punish him for criminal offenses like assaults. If your relationship with your partner has ended or if you have left him, there are many legal matters that have to be worked out. For example, if you have children, you will have to decide who will have custody of them and how much child support will be needed to raise them. You may also have to decide who will continue to live in your home after the separation. If the two of you own property or other things like a car, you will have to decide how those things will be shared between you. Also, if you haven't been working for a while or haven't worked during your marriage, you may need to get some financial assistance from your partner. Family law can also help to ensure that your partner respects your wishes to live separate and free of him and will issue a restraining order against him in appropriate circumstances.

Getting a Lawyer

a. Do I need a lawyer?

In family law matters, it's important for you to consult with a lawyer to find out what your legal rights are. Don't rely on the information your partner gives you; that information may not be accurate, and he may be trying to mislead you about your rights for his own purposes. Don't go to a lawyer suggested to you by your partner. Don't go to the same lawyer as your partner. You should always have your own, independent legal representative.

If you are thinking about leaving your partner or have recently left him, it's a good idea to get in touch with a lawyer or legal clinic as soon as possible.

If you are not sure what legal help you want or need or what you can afford, contact your local shelter or the Lawyer Referral Service for the name of a lawyer near you.

b. How do I get a lawyer?

There are many ways to find a family lawyer. However, finding a lawyer who is understanding and knowledgeable about issues like wife assault is sometimes difficult.

To start your search for a good, understanding and knowledgeable lawyer, consider these options:

- Contact your local shelter for battered women

or women's community centre in your area and ask them for a referral to a lawyer (see Resources section on pages 132-134). They are likely to know family lawyers who have worked with assaulted women and who have had a good "rating" from clients in the past.

- Contact your local legal clinic (see Resources section on pages 132-134). They also will have lists of family lawyers. Ask them for their advice about a lawyer who is sensitive to the situation of battered women.

c. What if I can't afford a lawyer?

If you can't afford a lawyer, ask the people you contact to refer you to a lawyer who accepts legal aid certificates. Once you have the name of a lawyer, you will have to apply for legal aid.

d. How do I get legal aid?

There are legal aid offices in every major centre in Ontario. Look in the white pages of the phone book under Legal Aid. There are also legal aid offices in most courthouses. Look in the blue pages of the phone book under Ministry of Attorney General for the location of the courthouse in your town.

What is legal aid?: Legal aid is financial assistance provided to you by the Government of Ontario for the purposes of hiring a lawyer to represent your legal interests.

Who can apply to legal aid?: If you are not working and are receiving public assistance or if your annual income is low, you may qualify for legal aid.

If you meet the financial qualifications for legal aid, you have a right to apply for and receive a legal aid certificate to retain the lawyer of your choice.

How do I apply?: The legal aid office will tell you how to apply for a certificate. It usually takes a long time to make an application, so be prepared to spend anywhere from one to four hours at the legal aid office. It's generally a good idea to go as early as possible.

How do I get a legal aid certificate in an emergency?: Legal aid will provide immediate service to battered women. If you identify yourself as a battered woman, you may be able to get a certificate on the same day. This is important if you need to go to court quickly for an order for custody, etc. Legal aid will also allow you one free hour of legal advice from a lawyer, and your lawyer can help you get an emergency certificate if needed.

What if legal aid turns me down?: If you are told that you are not financially eligible for legal aid or that you don't need a lawyer, you will have to call the lawyer you have been referred to and ask her/him to assist you with legal aid. The more information you can give your lawyer the better. The lawyer can call the legal aid office and discuss your case with the person who turned you down.

Most cases in family law need the attention of a lawyer. Your lawyer may be better able to get you a certificate than you are.

What if I'm not eligible for legal aid?: If you are not eligible for legal aid and must pay your own fees, shop

around. You may have to call lawyers who you were referred to and discuss the cost of their services. Like any other business, it's worth finding the legal services that best suit you and your budget.

e. How should I deal with my lawyer?

Many people find dealing with lawyers a bit scary, but remember that lawyers are there to work for you. Lawyers have skills and experience to offer you, but you are employing them.

Fees: Don't be afraid to talk to your lawyer about fees. Ask your lawyer

- what the hourly rate is;
- what disbursements (expenses) are expected;
- how much money you have to pay immediately (this is called a retainer, and it's a prepayment of your bill);
- how often you will be billed;
- whether payments over time are accepted and if so, how long will you have to pay;
- how much the lawyer thinks the case will cost you. Often lawyers won't be able to answer this exactly, but it's fair to ask.

There is no sense hiring a lawyer you can't afford. Quality of legal services can't be judged by fees or cost. Just because a lawyer is expensive doesn't mean she/he is a better lawyer than a less expensive one.

It's also important to keep in mind that most family law lawyers will bill you on an hourly basis. The more time they spend on your case, the higher your bill will be. The bill will include all phone calls, letters, court

appearances (even if the hearing is adjourned), research, preparing documents, interviews and collecting information. If you can help in any way by collecting documents, organizing information or by keeping your phone calls and meetings as brief as possible, you may be able to keep your bill down.

Giving instructions: Giving instructions means telling your lawyer what it is you want her/him to do for you. This can be very difficult, particularly during an emotionally stressful time when you may find it hard to decide what you want or need. While it's important to get your lawyer's advice, it's also important for you to feel free to make the final decision on what you want to do. Take time to think about the advice your lawyer has given to you before you make the final decisions. You are the one who has to live with the results of the decision.

If your lawyer doesn't seem to be listening to you or is making decisions you're not happy with, you may want to look for another lawyer. Discuss this with your lawyer first. The problem may be a misunderstanding or bad communication.

If you are an immigrant woman whose first language isn't English, it's a good idea to take a trusted friend or family member with you to your lawyer's office to interpret for you. If there is no one available to do this, ask your lawyer to arrange for an interpreter. It's very important that the meaning of words or legal concepts are clear to you. It's very important that there is no misunderstanding between you and your lawyer about your wishes. Don't be afraid to ask your lawyer to repeat or explain something again if you didn't understand completely the first time.

Be clear on the things that are important to you when giving instructions to your lawyer. Your lawyer must know what your bottom line is so she/he can get what you want as quickly as possible.

When telling your lawyer what you want her/him to do, be specific. For example, if you want your partner to have access to your children every other weekend from Saturday 11 a.m. to Sunday at 5 p.m., say that and not just "every other weekend."

It's very important that you give your lawyer as much information as possible about your case. For example, if you are claiming custody of your children and your partner is as well, you should tell your lawyer as much as possible about who took care of the children and about the kind of relationship you and your partner had with the children. Tell your lawyer why you don't think your partner should have custody or why you should. Make sure your lawyer knows about any problems that have been in your family. This kind of information is important for your lawyer to have when she/he is preparing your case.

You may want to give your lawyer your instructions in writing. Some lawyers will send you a letter confirming your instructions to them. If the letter does not state what you want, make sure you correct the mistakes with your lawyer right away.

Asking questions and getting answers: It's your right to ask your lawyer questions and to have them answered clearly. Don't be afraid to ask your lawyer the questions you need to know to understand what is going on in your case.

It's a good idea to write down notes of the questions or issues you want to raise with your lawyer. Make

sure you go through your list before you leave her/his office. You will save time and money if you deal with as much as possible during each meeting. Be as clear as you can in your questions so you get clear answers back. It's also a good idea to take notes of your lawyer's answers so you can review them later.

If you have general concerns like a concern about the length of time a case is taking, ask your lawyer why this is happening. Some cases are more complicated than others and may take longer. If you are not able to reach your lawyer for a long period of time by telephone or by letter and you get no information or answers from her/his office, you can contact the Law Society of Upper Canada to complain.

Custody

a. What is child custody?

Custody refers to specific legal rights and obligations that come with being the parent or guardian of a child. Under the law, a child's parent or guardian has a duty to care for and protect the child or children in her/his charge and to provide that child with the necessities of life. As a child's parent or guardian, you also have the sole legal right to make decisions about your child's welfare and everyday life.

When mothers and fathers dispute custody, both are making a claim to become the sole custodians of their children and to have sole legal rights to their

children. When a mother and father agree to joint custody, they are agreeing to equally share the legal rights to their children. This doesn't necessarily mean that the parents will equally share responsibilities for the child nor does it mean that physical custody of the children will be shared. You should have the meaning of joint custody clearly explained to you by your lawyer before you agree to it.

Custody is also different from *access*. A parent who has access to her/his children doesn't have the same or as many rights as a custodial parent. Access is described in more detail on pages 86-90.

b. Do I need to get legal custody of my children?

While you and your children's father are living together, you both have equal rights to your children. Separating from your partner doesn't change the fact that you both continue to have equal rights to the children. Your and your partner's legal rights to your children will only change if you or your partner get a custody order from a court or make a custody agreement.

It's important to speak to a lawyer about what protection you have with *de facto* custody – which is when you actually have the children with you – or whether you should go to court to get a custody order.

If you want your children with you, it's generally a good idea to get legal custody of them as soon as possible after you separate from your partner. But consult a lawyer to ensure that it's the right time to make a custody claim.

c. Can I get custody of my children even if I leave without them?

It's very important for you to take the children with you when you leave if you can do so without risking your safety. If you can't take them with you when you leave, it's important that you take legal steps immediately to get them.

It's possible to get interim custody of your children if you left them with your partner, but it's harder than if you have them with you. Generally, courts prefer to leave the children where they are unless there are very serious reasons why they should be moved.

Many family cases take months or even years to finish. The court is likely to decide to leave the children with the parent who's had them during the court case rather than disrupt their lives with another move.

d. What is joint custody?

Joint custody means both parents continue to share equal rights to their children after their separation. This is different from *sole custody*, where one party has greater rights to the children than the other.

The legal rights shared by parents in joint custody situations involve the right to make all decisions affecting the children, including things like what school they'll attend, what religion they'll be raised in, what recreational activities or hobbies they'll participate in, what health treatment they'll get and even what neighborhood or city they'll live in.

Joint custody doesn't necessarily mean a sharing of physical custody of children. In some joint custody situations, the children spend half of their time with one parent and half with the other, and the responsibilities for raising the children are evenly shared. In most

joint custody situations, however, the children live with one parent full time and visit with the other occasionally. In these situations, one parent will have far greater responsibilities for the caring of the children than the other. But regardless of where the children spend most of their time or who they're raised by, both parents have the same rights to them and the same decision-making power.

Whether the decisions to be made are major or everyday decisions, in a joint custody situation they may have to be made by both parents together. In order for joint custody to work, there must be a high level of co-operation and respect between the parents. Unfortunately, it may be difficult for parents to co-operate with each other and make reasonable decisions where there has been a history of abuse. Men who have been violent and controlling throughout their relationship often continue to be so after their separation.

It's important for you to decide whether your partner is capable of working with you co-operatively on matters affecting your children. It's also very important to decide whether or not you will feel safe during the contact with your spouse that joint custody arrangements require. And you must also decide whether you can live happily or peacefully with what may turn out to be a substantial amount of on-going involvement in your life with your ex-partner.

Don't feel uncomfortable if you don't want a joint custody arrangement. Only you know what the possibility is for a good or co-operative relationship with your ex-partner after separation. Remember, it's you and not your lawyer or psychologist who must live with the joint custody arrangement. If you want your

ex-partner to play a part in your children's upbringing, he can just as easily do so when you have sole custody.

e. What is co-parenting?

Some people confuse *joint custody* with *co-parenting*, but they are not the same thing.

Joint custody is a legal term and involves sharing of legal rights to a child. If a husband or wife want to have the right to make decisions about their children, they apply for *sole* or *joint* custody.

Co-parenting is not a legal term. It's a term used by psychologists, social workers and sociologists, and refers to an arrangement in which both parents contribute equally to child-rearing. Co-parenting may involve having equal rights to a child, but most importantly, it refers to sharing the day-to-day tasks and responsibilities of caring for and raising children. For example, parents who co-parent may jointly make a decision about what school their children will attend, but they'll also share the *job* of driving the children to and from school, helping the children with their homework and attending parent-teacher nights. Joint custody doesn't force either parent to take responsibility for the caring or raising of children.

f. How does the judge decide who gets custody?

The law states that the best interests of the children should be considered in deciding who gets custody. This principle of law and many of the factors the court will consider in deciding custody cases are listed in the Children's Law Reform Act.

Section 24 of the Children's Law Reform Act states that the judge must consider all needs and circum-

stances of the children, including

- the love, affection and emotional ties between the children and each parent;
- who can provide the children with stability in their lives relating to things like housing, day care or schooling;
- each parent's plans for the care and upbringing of the children;
- each parent's ability and willingness to provide the children with guidance and education, necessities of life and any special needs of the children.

If the children are older, the judge will sometimes take into account who they want to live with. Judges will usually not take younger children's opinions into account. The exact age at which the children's wishes are considered depends on their maturity and their reasons for choosing one parent over another.

Many women worry that they'll lose custody because they don't have as much money as their ex-partners. It's true that financial issues are important, and judges think that financial advantages are very important in a child's life. But keep in mind that financial support of your children is both parents' responsibility, regardless of who the children live with. When you claim custody of your children, you can also claim financial support for them from your partner. Make sure that you claim support that is sufficient to keep you and your children in the same lifestyle that you had before you separated. Your partner has an obligation to support his children, and with his support you may be able to provide some of the same financial advantages as he could.

g. What if my child has been abused?

Child abuse is very important in deciding who gets custody. Issues of abuse should be raised in family courts, but child abuse, specifically sexual abuse, can often be difficult to prove.

If your child has been physically, emotionally, verbally or sexually abused, *be sure to let your lawyer know details of the abuse as soon as possible.* Your lawyer may advise you that it's not a good idea to raise allegations of sexual abuse in court because you may not be believed. If this is the case, it may be necessary for you to change lawyers. If you continue with the same lawyer, discuss these issues with her/him; if she/he refuses to raise the sexual abuse allegation, send a letter confirming that you told her/him about the abuse, but you were advised against raising the issue. Keep a dated copy of your letter.

It's very difficult to raise sexual abuse allegations at a later time if you've been silent about it from the start. Protect yourself by ensuring that your concerns were noted from the start or as soon as you became aware of the abuse.

If you tell your lawyer or anyone else of suspected child abuse, she/he has a duty to notify the Children's Aid Society. Everyone, including you, has a duty to report child abuse to Children's Aid. This is dealt with more on pages 108-110 in the section on Children's Aid.

Dealing with your child's abuse may be very hard on you. You may be the only person your child has told or will tell. You may find that most professionals (doctors, psychiatrists, social workers and lawyers) will not believe that your partner sexually abuses his children. Don't start to doubt yourself or your child.

and don't blame yourself for your partner's abuse. Ask your lawyer, local shelter or women's centre for the names of agencies or services in your community for help to cope with abuse.

h. What is a custody assessment?

A *custody assessment* is usually ordered by a court. It's a process of investigating the needs of a child and the abilities of parents who are seeking custody to meet these needs. The assessment results in a report by the assessor (usually a social worker, psychiatrist or staff from the Official Guardian's office) which the court uses to help it decide which parent should have custody and what access arrangements are best for the child.

Custody assessments can sometimes be very stressful. It would be a good idea talk to your lawyer about how the assessments are done and what things are important before the assessment is started.

The custody assessment will play a very important role in deciding who gets custody and what kind of access there is. The person who does the assessment will interview you and your partner alone and each of you with your children. The assessor will also interview the children alone and may spend extra time with the children if they feel it's necessary. Family members, friends, teachers, doctors and other people who know the child may also be contacted and interviewed.

If there are people you think should be spoken to for the assessment, tell the assessor who they are. If the assessor disagrees with you or seems to be treating you unfairly, tell your lawyer as soon as possible.

i. Who is the official guardian?

The *official guardian* (OG) is a person appointed by the government to represent people – including children – who can't represent themselves. Since your lawyer represents you and your partner's lawyer represents him, sometimes courts feel it's a good idea to have a separate lawyer represent the needs of the child or children involved in a custody dispute.

The official guardian's office is always told about custody disputes that are a part of divorce cases. They will do many of the same things as the person doing a custody assessment. If your children are old enough, the OG will ask them what their wishes are. If your children are very young, the OG will decide what's in your children's best interests. Keep in mind that the OG doesn't represent your interests.

The OG representative will make a recommendation to the judge about who should get custody and what arrangements there should be for the other parent to have access.

j. What is mediation?

Mediation is when you, your partner and a mediator, who is usually a lawyer or social worker, meet to try to settle disputes without going to court. However, mediation may not be the best way for you to protect your legal rights.

If you have been abused in your relationship or feel scared and threatened by your ex-partner, you may not feel protected during the mediation sessions. If mediation has been suggested to you, you must decide whether you'll really be able to negotiate without a feeling of intimidation by your ex-partner. Also, keep in mind that the mediator doesn't represent your inter-

ests, and your legal rights may not be protected in the mediation process. The mediator may or may not have any knowledge about your legal rights. Consult with a lawyer before getting into mediation so at least you are familiar with your legal rights. Consult with a lawyer before you sign any agreement suggested by a mediator.

If you don't feel comfortable with mediation, you don't have to accept it or even try it. You must feel confident in your ability to negotiate equally with your partner. Don't feel badly if you don't want to be involved in mediation. Once you're in it, it's important that you feel comfortable with the mediator and that you have confidence in the mediator's ability to understand what you've experienced in your relationship and how you wish to live after your separation. If you're not happy with the mediator, consult with your lawyer.

Access

a. What rights does access give?

Access gives the non-custodial parent the right to visit the child or children as ordered by the court or agreed to by you and the father. If your partner has access on Saturdays, that doesn't give him the right to visit Wednesdays. However, if the order says *reasonable access*, *as arranged* or *generous access*, then even if he usually sees the child or children on Saturday, he

would probably have the right to visit on Wednesday. For this reason, it's a good idea to be as specific as possible in access orders or agreements.

Access orders also usually cover things like summer holidays, spring break and Christmas or family holidays and birthdays. Making arrangements for access on these days can be difficult.

Access also gives the non-custodial parent the right to be informed of decisions regarding the child's health, education, welfare and upbringing such as a change of school. However, this doesn't give the non-custodial parent a right to be a part of the decision unless it's included in the access order. If you are having problems with the access visits, let your lawyer know as soon as possible. Try to keep notes of the problems you are having with dates, times, places and what happened so you can give your lawyer as much detail as possible.

b. What kinds of access are there?

There are three kinds of access. There is *unrestricted access* where the access is left open-ended. Usually, this is covered by orders such as *reasonable access* or *generous access*, as mentioned above. This leaves details of access to be arranged between the parents and gives no limit to how much or what kind of access is allowed. The kind of visitations the father has with the children isn't restricted in any way.

The second type of access is *specified access*. This type allows you to be very specific about how often, when and under what conditions access will be allowed. You can also specify that access will be arranged through a third party if you don't want to be involved in the pick-up and drop-off of the children.

Having third party pick-up and drop-off is not always easily arranged, but it can be very useful if you feel threatened, abused or harassed by the children's father.

The third type of access is *supervised access*. In this case, the court and/or lawyers decide where the access is to take place and who supervises it. Courts are generally reluctant to grant supervised access unless it can be shown that the access parent can't care for the children without assistance, or that there are concerns about the children's safety.

c. When will access to my child or children be ordered?

In almost all cases, courts will make an order for access to the parent without custody (called the *non-custodial* parent) unless some serious problem with this parent can be proven. Some of the cases where access might not be ordered include

- where there is some evidence that the non-custodial parent will harm the children, either directly or indirectly;
- if there are grounds to fear the children won't be returned to the custodial parent;
- if there are reasonable grounds to believe that the non-custodial parent might harm or endanger the *custodial* parent when picking up or dropping off the children. Assaulted women often find that many abusive partners want more access to them than to their children. If your ex-partner doesn't seem genuinely interested in the children, tell your lawyer.

If you think that any of these things may happen, let your lawyer know so she/he can ask for an order limiting or refusing access.

There may also be other reasons why you don't want your ex-partner to have access: for example, if he upsets the children when they're with him or tries to alienate them from you. Your children themselves may not want to visit with him, or you may be concerned that he doesn't take proper care of them. None of these things may be considered good enough reasons to limit or deny him access, but tell your lawyer about them anyway.

If none of these special problems exist, then the court will almost certainly order that access be granted. This may be very difficult for you to accept. Access may also be hard to arrange. If you think it would be easier to arrange access visits through a third party such as a trusted friend or family member or even through a community agency, that can also be arranged. Let your lawyer know what arrangements would best suit you so she/he can try to work out the best access schedule and pick-up and drop-off arrangements for you.

d. How are access orders enforced?

Family law provides ways of enforcing access orders if one party violates them. For example, if you have custody of your children and your ex-partner has access rights and believes you are preventing him from seeing his children, he can make an application to the court to enforce his rights.

If you and your ex-partner are having conflicts over access, you should speak with a lawyer to review your legal rights.

Also, be aware of the fact that the law permits your partner to bring a court application against you very quickly. If you are served with such an application, contact a lawyer or legal clinic right away.

Support

a. What is spousal support?

Spousal support is money paid by one spouse to another for their financial assistance.

Once a court decides support should be paid and how much, it can order the support to be paid in one lump sum or in monthly payments. The monthly payments will usually be ordered for a specific period of time; for example, for one or two years, or until such time as the dependent spouse can become financially self-sufficient.

b. Who is eligible for spousal support?

Anyone who is a dependent of another person can make a claim for support. Your right to claim spousal or child support and all the factors the court will consider in deciding this come under the Family Law Act of Ontario.

It's possible to get spousal support for yourself if you are married, if you are unmarried but have lived together for more than three years or if you have lived together and had children together.

c. How is spousal support decided?

There are many things a court considers when it decides how much support, if any, should be paid to you and to your children.

In general, the law now states that both adults are responsible for supporting themselves with their own income. This means that getting spousal support isn't as common as it once was. However, the law does award support to the woman if she

- stayed at home to care for the children;
- needs training or re-training before she can find employment;
- was financially dependent on her spouse when they lived together and because of age, health, etc. can't reasonably be expected to work and support herself.

The court also considers many factors that relate to your ability to earn your own income after separation, what your financial needs are and your partner's ability to pay.

It will be necessary to prepare detailed financial statements about your income and expenses before making a claim for support. Your partner will also have to give the same financial information.

When you are preparing the financial statements, be as accurate as possible. Don't be too stingy in figuring out your expenses. For example, movies, lunches at work, vacation expenses, clothes and presents are all reasonable expenses to have. Spend some time thinking about all the expenses you have during the year so you don't forget about annual, one-time payments and expenses such as car insurance.

You won't get less support because you left your partner, but you won't get more money because he was abusing you or seeing someone else. The court doesn't consider how you or your partner behaved in figuring out how much support you should get. His behavior might be taken into account, however, if it has affected your ability to get a job and earn your own income.

d. What is child support?

Child support is money paid to a *custodial* parent (or the parent raising the child) by the other parent for the financial benefit of the children. It's a contribution to the day-to-day expenses of raising children, and it's both parents' obligation to contribute to their children's support.

e. Who must pay child support?

Both parents are responsible for supporting their children. Generally, your responsibility ends when your children turn 16 years of age and are no longer under your control, unless they remain in school. Child support can be ordered against anyone who is a biological parent of the child or someone who acted as a parent, like a step-father. You don't have to have been married or have lived with the father for the courts to issue a child support order.

f. How is child support decided?

In making child support orders, the court considers the children's financial needs, the income of their parents and how to divide up the responsibility.

g. What if he doesn't pay spousal or child support?

Many women have a hard time getting support payments for themselves and/or their children from their partners.

A few years ago, the provincial government passed a new law, the Support and Custody Orders Enforcement Act*, which makes it easier to get your support orders paid. If your partner is defaulting on his support, you can go to the courthouse nearest you and fill out an application for support enforcement. Once you have done that, the director of enforcement will take whatever steps possible to get the money you're rightfully entitled to.

You don't have to use the director of enforcement, however. You can still employ your lawyer to bring an enforcement proceeding for you. In some cases, it may be faster or easier to use your lawyer than to use the director of enforcement. If you are not getting the support payments you are supposed to be receiving, let your lawyer know immediately. If you don't have a lawyer but have a court order, you can contact the family court registry and explain your problems to them.

Some of the ways you can get money from partners or fathers are

- having part of his wages "garnisheed," or paid to you directly by his employer;

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*At this book is being printed, new legislation is being considered that will create a support deduction plan. Under this plan, support payments would be deducted directly from the paycheque of the partner owing support. That spouse's employer would send the money to the program enforcement office, which would send it to the other partner. This legislation will probably become law in the fall of 1994. Talk to a lawyer or legal clinic for more information.

- having his bank accounts "garnisheed," or paid into court for you;
- getting a court order to have him pay his support payments into the court rather than to you directly. The court will then pay you;
- having your partner sent to jail if he refuses to pay the support and the court decides he is able to pay.

There may be other ways provided by the law to get your support payments. Discuss this with your lawyer or legal clinic to find out what your options are.

Exclusive Possession of Your Home

a. What is it?

Exclusive possession of your home means that a court may give either you or your partner the sole right to live there. Exclusive possession of the home doesn't give you title to your home. It just gives you the right to live there without your partner until other arrangements are made or agreements reached.

It's usually difficult to get exclusive possession unless you have young children or unless your income is so low that it would be difficult for you to rent somewhere else.

b. Are the police involved?

If you have been or are being assaulted in your home

by your partner, it's possible to have the police remove your partner from your home, arrest him, charge him and possibly make an order that he can't have any contact with you. The police do this because a criminal offense has been or may be committed, and they remove him for your protection and safety. This isn't an exclusive possession order. Only a family court may take away your partner's right to reside in your house. The police only have the power to prevent your partner from committing another assault.

c. Can I stay in my home?

If you wish to separate from your partner and wish to remain in the matrimonial home (this includes apartments) and live there indefinitely, you must ask your lawyer to make an application to the court.

While you and your partner are still together, you both have equal rights to possession of your home.

d. How do I make an application for exclusive possession?

Before you make an application for exclusive possession of your home, you should consider whether or not you and your children will be safe there. If your partner is violent or threatening and isn't likely to respect a court order, it's not advisable to remain in a place where you're alone and he can find you.

Consult a lawyer about making an application to court. The Family Law Act sets out factors the court will consider in making an exclusive possession order. These factors include

- the children's best interest;
- the availability of alternative accommodation;

- whether your partner has committed violence against you or your children.

e. Does it matter if I'm married or unmarried?

Only married spouses can get exclusive possession orders for their homes, apartments or any other residence they live in with their husbands. If you are living with your partner, the decision about who gets to stay in your home will depend on who owns, rents or leases your home.

All spouses, including unmarried spouses, can apply for restraining orders. Consult a lawyer.

f. Are there special difficulties for native women?

If you are living on a reserve, you won't be eligible for an exclusive possession order.

Property on a reserve isn't regulated by the provincial family laws. Because reserves are regulated by the federal government, they are governed by the Indian Act. Under the Indian Act, the band council controls how property and housing on the reserve is divided among members of the band. Provincial family laws giving a person a right to claim exclusive possession of their home don't apply.

Women who are trying to separate from their spouses on a reserve may also find it difficult to acquire housing. The batterer can't be removed from his house without the agreement of the band council, and housing is generally in short supply.

g. What if he returns or breaks in?

Call the police right away if your partner returns or

breaks in. The police must enforce all court orders. Make sure you have the original court order or a certified copy of the court order with you at all times to show the police.

h. How do I enforce exclusive possession?

While some police are very good about enforcing exclusive possession orders and help women in these cases, others don't like to become involved in family cases. You may find the police are reluctant to take action against your partner. Be prepared to insist that the police enforce your orders.

If the police are not helpful, call the staff sergeant at the police division that you contacted, a lawyer or a legal clinic. These people may help you get some action.

The biggest problem you may have is simply that your partner isn't deterred by a court order and may still try to break into your home or harass and threaten you even when you do have these orders.

If his harassment or threatening is persistent, you may have to think about moving. Discuss this with your lawyer. If your partner has access to his children, it may be a difficult or complicated matter.

Restraining Order

a. What is a restraining order?

A *restraining order* is a court order preventing your

partner from annoying, molesting or harassing you and/or your children. It's different from a no-contact order, which is made by a criminal court. A restraining order comes from the Family Law Act. However, both kinds of orders must be enforced by the police.

Women often experience a great deal of harassment and intimidation from their spouses long after their separation.

b. How do I apply for a restraining order?

You can apply for a restraining order from the civil courts. You can't get a restraining order from the criminal courts or a justice of the peace.

Talk to a lawyer or legal clinic about the best way to apply for a restraining order. In some cases, it may be best if you get a lawyer to make the application for you rather than doing it on your own.

Ask for a restraining order that is as detailed and specific as possible. You may want to consider having places like your work site, your child's school or your parents' home, as well as your own home, included in the restraining order.

You can get a restraining order right away on an interim basis. This will give you quick, short-term protection. Or you can get a restraining order on a final or permanent basis.

c. When will the court issue a restraining order?

Courts will generally issue a restraining order when there is physical abuse in a relationship. They will also sometimes grant restraining orders when there is emotional abuse. It's important to state clearly in your application what kind of abuse you've been subjected

to, how long this abuse has gone on and your fears and concerns for the future and for your children.

Some courts will routinely order both spouses to be restrained from annoying, molesting or harassing one another. Although this may be the only way to get some protection for yourself, you should object to this kind of order since it's your partner and not you who is committing the violence.

Judges also tend to be very concerned about the impact a restraining order might have on access arrangements. If your partner has access to your children, the court may be reluctant to order him to stay away from you because that would also prevent him from seeing his children. But if your partner is threatening, intimidating or violent to you when he picks up or delivers his children, you should advise the court of this. Be as detailed as possible about examples of his behavior at these times. If your partner can't control his behavior during access visits, you should ask the court to change his access or that arrangements be made to have the children picked up and delivered to you by someone else.

It would be best to consult a lawyer or legal clinic in your area to discuss your chances of getting a restraining order.

d. What protection does a restraining order give me?

The amount of protection you get from a restraining order depends very much on what impact the order has on your partner. If he understands and respects the order and is concerned about going to jail if he breaks it, the order may give you the peace and protection you want and deserve.

How much protection you have also depends on how responsive the police are. Some police are better at enforcing restraining orders than others.

The Family Law Act and the Children's Law Reform Act state that a police officer may arrest your partner without a warrant if she/he believes on reasonable and probable grounds that your partner has contravened a restraining order. Witnesses or a telephone tape recording may help you convince the police that the order has been broken.

It's always a good idea to have a *certified* copy of the restraining order with you in case you need to call the police to enforce this order. A certified copy of the order comes from the court registry and is official proof that you have a restraining order.

A restraining order against your partner is only enforceable if he has received a copy of it. Ask your lawyer to provide you with proof of service of the order on your partner.

Dividing Family Property

a. What is family property?

Family property is a legal term from the Family Law Act which refers to all property owned by either married spouse. Family property doesn't cover things owned by common-law spouses.

Family property includes things like your home, dishes, jewelry and furniture as well as stocks and

bonds, RRSPs, pensions, bank accounts and business assets. While any home you own is counted as family property, it's treated differently than other things.

b. What property am I entitled to?

Your rights to property will depend on whether you are legally married or not. The information given here is very general information. What things you are entitled to may vary a lot depending on your situation. Consult a lawyer or legal clinic for individual advice about your case.

If I'm married: Under the Family Law Act, you are entitled to an *equalization* of family property. This doesn't mean everything is divided exactly 50/50. When the court equalizes property, it does so by calculating the value of all property owned by your husband and then subtracts from that amount all of his debts to arrive at his net worth. The same thing is done for you. Your and your husband's net worths are then equalized between you. The exact way in which family property is defined and divided is very complex. Consult a lawyer about how it's done.

Family property may not include things you either inherited or were given during the marriage, or items you owned prior to your marriage.

You do have the right to take things that are family property with you when you leave as long as these items are kept safe until it's finally decided or agreed who should have them.

You might be concerned that property (including bank accounts) or things you leave with your partner might not be safe. You can either take them yourself or have your lawyer apply for an order to prevent your

partner from disposing of any family property. If you are concerned that your partner may sell or hide some of his and your assets, tell your lawyer right away.

If I'm unmarried: Generally speaking, if you are not married, you have no right to take things or property you don't own.

If, for example, you owned the TV set before you lived together or were given it or bought it while you were living together, you can take the TV set with you. If your partner owned, was given or bought the TV, then it remains his.

Problems develop when you jointly paid for the TV or when your partner bought the TV and paid for it because you both agreed he would work and support the family while you remained in the home, maintained it and raised the children.

If your partner gained or received things or property while you lived together and he was able to save his money and acquire property because or even partly because of the work you did at home or because your salary was used to pay family expenses, you may have a right to make a legal claim against him for compensation. You should consult with a lawyer about what rights you have to a fair division of property or compensation.

c. How do I apply for a division of family property?

The law around family property is very complex and confusing. It will be necessary to get a lawyer to apply to court to divide up the family property. If you feel you have contributed to the purchase of property and to

your partner's ability to buy property or assets, speak with your lawyer about this.

d. Family property and native women

If you are a native woman, your right to share in family property will be determined mainly by whether or not you live on a reserve.

Property laws are different on a reserve. Neither you nor your partner may be entitled to land. Other property (like furniture, cars, etc.) may belong exclusively to your partner or to the band. The band may control how these things are divided between spouses when they separate. Your band's status and your status in the band may be important factors in property division between you and your partner.

It's important that you consult with a lawyer or legal clinic in your community.

Separation Agreements

a. What are separation agreements?

Separation agreements are written contracts that deal with issues arising from a separation. Normally, separation agreements will include all the issues dealt with in this guide, like custody and access of children, division of family property, and support and possession of the family home.

A separation agreement can be registered with the

court and have the same power and effect as a court order.

If you have a separation agreement, courts will almost always force you to stick with it and enforce what the agreement states. So, if, for example, you sign a separation agreement that says you will receive $100 a month support for three years and you later discover you need more support, it will be very difficult to get a court to order an increase in your support. Though it's possible to make an application to change the agreement, it's not easy to do so. If you think the terms of an agreement may not be fair to you (like support or property provisions) or that provisions about custody and access may not work, discuss this in detail with your lawyer. Make sure your lawyer clearly understands your concerns.

Remember when you are working on an agreement that you don't have to agree to things you don't want. Remember that you will be bound to what you agree to. It's important to have all the information you need to make an agreement, like what assets your partner has and how much income he earns.

Separation agreements can save time and legal fees if it's possible for you and your partner to agree to a reasonable settlement of all the issues. But if it's not possible for you to agree, don't feel badly about taking the matter to court.

b. How do I get a separation agreement?

It's best to consult a lawyer to get a separation agreement. No matter how simple it may seem to you, there will be issues including cost of living increases in your support payments, dividing pension and other family property, access arrangements and schedules, all of

which should be considered when drawing up an agreement. Lawyers and legal clinics can give you advice on all these issues when you are discussing or negotiating an agreement.

You should also make sure you both have your own lawyers. Even if you both know, like and trust one lawyer, you should never have one lawyer advising or helping both of you. *Don't sign any agreement*, even a rough handwritten agreement, without first consulting a lawyer or legal clinic.

Divorce

a. When can I get a divorce?

You can get a divorce in Canada at any time if there has been adultery, mental or physical cruelty, or after one year's separation.

Even where there has been mental or physical cruelty, it's almost always faster, less stressful and less complicated to apply for a divorce on the basis of having lived separate and apart for one year. You can apply for the divorce the day you separate as long as a year passes before the divorce is made final.

You don't need to get a divorce just because you separate. You can settle all the matters between yourself and partner (custody, support and property division, etc.) by an application under the Family Law Act and Children's Law Reform Act or by a separation agreement. The purpose of a divorce is to dissolve

your marriage. Whether or not you wish to do that when you separate is up to you.

b. How do I apply for a divorce?

It's probably best to get a lawyer to handle your divorce, although it's possible to do it yourself.

A divorce is started by way of a document called a *divorce petition* and is brought under the Divorce Act. Once the divorce petition is registered in the court, it has to be served on your husband. There are different things that can be included in a divorce petition, such as custody, support, request for a restraining order or compensation for being assaulted. Talk to your lawyer about what things should be included in your divorce petition, how long it may take, and what steps will be necessary in your case.

CHILD WELFARE

What is Children's Aid?

CHILDREN'S AID SOCIETIES are provincial government agencies that are supposed to make sure children are cared for safely and properly. In Ontario, there are four different Children's Aid agencies: Children's Aid Society (CAS); Catholic Children's Aid Society (CCAS); Jewish Family Child Service (JFCS); and Native Children and Family Services.

What Does Children's Aid Do?

A CHILDREN'S AID society has many different programs and services that can vary from office to office. All programs and services are aimed at helping and protecting children.

Child protection: Children's Aid societies have the authority under the Child and Family Services Act to take children out of their homes when they believe a child is in need of protection. This can include children not being fed properly, not getting proper medical attention or being physically or sexually abused.

Children's Aid can take children for a short period of time or permanently. However, there is a complex procedure and set of court hearings that Children's Aid has to follow any time they wish to take a child away from her/his parents.

If Children's Aid is threatening to take your child or does take your child, contact a lawyer or legal clinic right away.

Parenting support: Children's Aid is trying to give more parenting support to families rather than taking children away from their parents.

Parenting support gives counselling and other programs and services to parents and children, to help families in trouble stay together. There are a lot of parenting support programs available in Ontario. You can consult your local Children's Aid office to find out what services are available in your area.

It's important to remember that once Children's Aid is involved with you and your children in parenting support, they may decide the situation is bad enough that the children have to be removed from your home.

Do I Have to Report Child Abuse?

EVERYONE HAS A responsibility to report child abuse to Children's Aid. Some people, like lawyers and social workers, have a special responsibility to report child abuse.

If you know your child or children are being physically or sexually abused and you don't report it,

you might face criminal charges. If your partner is abusing your children and you don't take steps to take them away from the abuse, you run the risk that the children will be taken away from both of you. You have a legal responsibility to care for and protect your children.

WELFARE/ SOCIAL ASSISTANCE

What Financial Assistance is Available to Me?

THERE ARE TWO FINANCIAL assistance programs available to you if you are unable to work, can't find work or are left without any means of support when you separate from your partner. These two programs are ***general welfare assistance***, which provides short-term or emergency financial assistance only, and ***family benefits***, which provides long-term financial assistance.

What Assistance do Welfare or Family Benefits Provide?

WELFARE AND FAMILY benefits provide for your basic needs. These include food, shelter, fuel, clothing, personal needs, utilities, medical coverage through OHIP, prescription drugs, dental coverage and special needs like those associated with pregnancy, special diets, etc.

When do I Receive Welfare or Family Benefits?

WHEN YOU MAKE AN application for financial assistance, you will start on general welfare and receive it for anywhere from three to six months. During this time, the welfare office will assess whether your separation from your partner will become permanent and whether or not you are able to get financial support from him. Under the welfare legislation you are required to seek support from your partner, by court application if necessary. However, in some circumstances (particularly where there has been violence) the welfare office may waive the requirement that you bring a court application against your partner. If the welfare office wants to pursue it, a worker will assist you in bringing a court application, or the welfare office can do it themselves. After the waiting period on general welfare assistance, you may be eligible for family benefits.

Who is Eligible for Welfare or Family Benefits?

YOUTH AND ADULTS IN financial need are eligible for financial assistance through welfare or family benefits. An assessment of your financial needs will be made to determine your eligibility. Your current income from employment or other sources like pensions or allowances and your assets will be reviewed. As well, your living expenses and other

factors like the number of children you have who are dependent on you will be assessed in determining your eligibility and the amount of assistance you will receive.

How Do I Apply for Welfare?

YOU APPLY FOR FINANCIAL assistance by phoning the social services department division of your city.

When you phone, an appointment will be arranged for a home visit during which time a worker from the department will come to your residence and review your financial situation with you to determine if you are eligible for financial assistance. The home visit usually happens within 24 hours, and if you are eligible, you may start to receive money within two days.

Can I Get Financial Assistance in an Emergency?

EMERGENCY FINANCIAL assistance is available to cover food, drugs and other essential needs. The welfare office can also assist you in locating shelter.

Once you've called for assistance, the welfare office will provide you with small amounts of money until you can make an application for welfare and start receiving benefits. Or the welfare office will provide you with

food (or information on where to get free food), bus tickets, diapers, a drug card for prescription drugs that are needed urgently or other essential needs.

What if I Need an Interpreter?

YOU CAN ASK WELFARE for an interpreter, but they may not have one available. You may have to arrange this yourself.

Can I Get Welfare Without a Permanent Address?

YES, YOU CAN STILL APPLY for assistance. Welfare can also arrange to pay your last month's rent if you can get a note from your landlord that confirms how much your rent will be.

Can I Get Financial Assistance if I'm Employed?

SINCE OCTOBER 1, 1989, the welfare system has had a new program to support people who are employed. Less of your net income will be deducted from your welfare allowance. You will be able to deduct some of the cost of your day care, up to a limit of between $300 and $400 per child per month from your

net income in determining how much of the money you earn will be taken off your monthly welfare allowance. Information and application forms are available through your local welfare office.

Can I Get Help if I Have Special Medical or Employment Problems?

IF YOU HAVE SERIOUS medical problems, are permanently unable to work, are disabled or need help to care for yourself, there is special assistance available to you through welfare or family benefits. If you are not on welfare or family benefits, you can receive special assistance by contacting your local Ministry of Community and Social Services office.

What if Welfare Won't Give Me Financial Assistance?

YOU HAVE A RIGHT TO make an application for welfare, and if you are financially eligible, you have a right to receive financial assistance.

If the worker assigned to your case isn't helping you, speak to a supervisor in their office. It's possible to appeal welfare workers' decisions. Consult a legal clinic in your community for help.

HOUSING

Where Can I Go in a Crisis?

IF YOU ARE IN CRISIS AND have family or friends around, don't be afraid to contact them if you feel comfortable with them. You shouldn't feel embarrassed or ashamed to ask for help when you need it.

If you don't have family or friends nearby or feel it would be a good idea not to be somewhere known to the man who assaulted you, there are different shelter and emergency housing choices across the province. Some of these are listed in the Resources section on pages 126-132.

If there are no shelters available, you can always call the police and ask them to take you and your children somewhere else that is safe.

Remember that your safety and health are the most important things. Don't be afraid to go somewhere safe when you feel you may be in danger or don't want to take the abuse any more.

Where Can I Get Permanent Housing?

FINDING HOUSING CAN often be a big problem. It's worse in some areas of the province than others, but it's almost never easy to find and settle into a new home.

The provincial government and some shelters have special programs for long-term housing for assaulted women. The government's program is run by the Ontario Housing Corporation (OHC). The OHC puts assaulted women on a priority list for their subsidized housing.

Contact the shelter nearest you to find out what housing programs and services may be available in your area.

IMMIGRATION

Will I Be Deported if I Leave My Partner?

CANADA IMMIGRATION has special rules for immigrant women caught in violent relationships. If you are not yet a landed immigrant and have to leave your partner, you won't be automatically deported. If you have permanent resident status, you won't be deported in any case.

Contact a lawyer or legal clinic to get advice about what you should do to protect yourself so you can stay in Canada.

Will My Partner Be Deported if I Leave or Charge Him with a Crime?

WHAT HAPPENS TO your abusive partner will depend a lot on your case. Consult a lawyer or legal clinic for more information.

Generally speaking, your partner isn't likely to be deported if you leave him, but that will depend to some extent on his or your immigration status.

If he is charged with assault, he won't be deported right away. He may face a deportation hearing if he is convicted of the charge.

What Happens to My Sponsorship if We Separate?

IF YOU WERE SPONSORED into Canada by your partner or if you sponsored him into Canada, your separation may have immigration consequences if you don't have permanent resident status. If you do have permanent resident status, you won't be deported.

To get the most up-to-date information about what might happen to your sponsorship or immigration status, consult a lawyer or legal clinic.

RESOURCES

THIS LIST OF COMMUNITY RESOURCES doesn't list all the available resources for assaulted women in Ontario. If you can't find the service you are looking for, call the Wife Assault Helpline. The number is in the white pages of the telephone book.

Shelters and Crisis Services

SHELTERS OFFER A WIDE variety of services throughout Ontario. Besides offering a supportive place to stay, shelters often also provide telephone referrals, counselling, education sessions, legal referrals and information and assistance about local services for battered women and their children. Most shelters operate 24 hours a day, seven days a week. Many of the shelters serving rural areas have toll-free (1-800) phone numbers so you can call without long distance charges.

LIST OF SHELTERS IN ONTARIO

Ⓦ means shelter is wheelchair accessible.

ALEXANDRIA
La Montée d'Elle
(opening Jan. 1992 – Call Directory Assistance)

ALLISTON
My Sister's Place
(705) 435-3835
1-800-461-5419

ATIKOKAN
Atikokan Crisis Centre
(807) 597-1447
1-800-465-3348

AURORA
Yellow Brick House Ⓦ
(416) 773-6481
(416) 727-1944
1-800-263-3247

BANCROFT
Maggie's Resource Centre
(613) 332-3010

BARRIE
Women & Children's Crisis Centre
(705) 728-6300
1-800-461-1716

BLIND RIVER
Mississauga Family Resource Centre
(705) 356-7800
1-800-461-2232

BRACEBRIDGE
Muskoka Interval House
(705) 645-4461
1-800-461-1740

BRAMPTON
Family Life Resource Centre
(416) 451-4115
(416) 451-4241 (after hours)

BRANTFORD
Nova Vita Women's Shelter
(519) 752-4357
1-800-265-0764

BROCKVILLE
Leeds & Grenville Interval House
(613) 342-8815
1-800-267-4409

CAMBRIDGE
Family Crisis Centre Ⓦ
(519) 653-2422

CARLETON PLACE
Lanark County Interval House
(613) 257-5960
1-800-267-7946

CHATHAM
Chatham-Kent Women's Centre Ⓦ
(519) 354-6360
1-800-265-0598

COBOURG
Women in Crisis Centre
(416) 372-0746
1-800-263-3757

COLLINGWOOD
My Friend's House Ⓦ
(705) 444-2511

CORNWALL
Maison Baldwin House
(613) 938-2958
1-800-267-1744

DRYDEN
Hoshizaki House
(807) 223-3226
1-800-465-7221

EGANVILLE
Avoca Interval House
(613) 628-2522
1-800-267-8827

ELLIOT LAKE
Women's Crisis Centre Ⓦ
(705) 461-9868
1-800-461-4623

FOXBORO
Three Oaks Foundation
(613) 966-3074
(613) 966-3075
1-800-267-0533

GERALDTON
Geraldton Family Resource Centre Ⓦ
(807) 854-1571
Zenith 81450

GODERICH
Survival Through Friendship House
(519) 524-6245
1-800-265-5506
TDD 1-800-265-5506

GUELPH
Women In Crisis/Marianne's Place
(519) 836-5710
1-800-265-7233

HAILEYBURY
Pavilion Family Resource Centre
(705) 672-2128

HAMILTON
Good Shepherd/Martha House
(416) 523-6277
Hamilton Native Women's Centre
(416) 522-1501
Hope Haven Homes for Family Abuse
(416) 547-1815
Inasmuch House
(416) 529-8149
Interval House of Hamilton-Wentworth
(416) 547-8484

HAWKESBURY
Maison Interlude House
(613) 632-1131
1-800-267-4101

KAPUSKASING
Habitat Interlude
(705) 337-1122

KENORA
Kenora Family Resource Centre
(807) 468-5491
1-800-465-1117
Women's Place Crisis Line
(807) 468-7233

KINCARDINE
The Women's House of Bruce County
(519) 396-9655
1-800-265-3026

KINGSTON
Kingston Interval House
(613) 546-1777
1-800-267-9445

KITCHENER
Anselma House
(519) 742-5894

LONDON
London Battered Women's Advocacy Clinic
(519) 432-2204
Women's Community House
(519) 439-4543
TDD (519) 439-4543
1-800-265-1576

MARATHON
Northshore Family Resource Centre
(807) 229-2222
1-800-465-3307

MATTAWA
Mattawa Family Resource Centre
(705) 744-5567

MATHESON (Black River)
Canadian Mental Health Family Resource Centre Ⓦ
(705) 273-2339

Metropolitan Toronto Area
NORTH YORK
North York Women's Shelter Ⓦ
(416) 635-9630

ETOBICOKE
Women's Habitat of Etobicoke
(416) 252-5829
(416) 252-5820

CITY OF TORONTO
Anduhyaun Residence
(416) 920-1492
Assaulted Women's Helpline
(416) 863-0511
Interval House
(416) 924-1491
Nellie's
(416) 461-1084
Red Door Battered Women's Shelter
(416) 462-9750

Shirley Samaroo House Ⓦ
(416) 249-7095
Women in Transition I
(416) 967-5227
Women in Transition II
(416) 533-1175
YWCA Women's Shelter Ⓦ
(416) 693-7342

MISSISSAUGA
Interim Place
(416) 271-1860

REXDALE
Ernestine's Women's Shelter
(416) 746-3701

SCARBOROUGH
Emily Stowe Shelter for Women
(416) 264-4357
Homeward Family Shelter Ⓦ
(416) 724-1316

MIDLAND
Rosewood (Huronia Transition Homes) Ⓦ
(705) 526-4211
1-800-461-1750

MILTON
Halton Women's Place
(416) 878-8555
1-800-387-4027

MINDEMOYA
Haven House Ⓦ
(705) 377-5160
1-800-465-6788

MOOSONEE
Moosonee Family Resource Centre
(705) 336-2456

NEPEAN
Nelson House
(613) 225-3129

NIAGARA FALLS
Niagara Women in Crisis/ Nova House
(416) 356-5800

NORTH BAY
Crisis Centre Ⓦ
(705) 474-1031
Nipissing Transition House
(705) 476-2429
Ojibway Family Resource Centre
(705) 472-3321

ORANGEVILLE
Hillside House Family Transition Place
(519) 941-1433
1-800-265-9178

ORILLIA
Green Haven
(705) 327-7319

OSHAWA
The Denise House/Sedna Women's Shelter
(416) 728-7311
1-800-263-3725
Higgins House
(416) 576-8880

OSHWEKEN
Ganohkwa Sra Women's Shelter (Opening Jan. 1992 – Call Directory Assistance)

OTTAWA
Helpline (English)
(613) 745-4818
Ligne secours (French)
(613) 745-3665
Interval House of Ottawa/ Carleton Ⓦ
(613) 234-5181
TDD (613) 234-5393
La Présence
(613) 233-8297
Maison d'Amitié Ⓦ
(613) 234-7204

OWEN SOUND
Grey-Bruce Women's Centre Ⓦ
(519) 371-1600
1-800-265-3722

PARRY SOUND
Grey-Bruce Women's Centre
(705) 746-4800
1-800-461-1707

PEMBROKE
Bernadette McCann House for Women
(613) 732-3131
1-800-267-4930

PETERBOROUGH
Crossroads I
(705) 743-4135
1-800-461-7656
Crossroads II
(705) 743-8922

RED LAKE
New Starts for Women Ⓦ
(807) 727-3303
Zenith 21800

ST. CATHARINES
Women's Place
(416) 684-8331

ST. THOMAS
Women's Place Ⓦ
(519) 633-0155
1-800-265-4305

SARNIA
Women's Interval Home
(519) 336-5200
1-800-265-1412

SAULT STE. MARIE
Women in Crisis (Algoma) Ⓦ
(705) 759-1230

SIMCOE
Haldimand-Norfolk Women's Shelter
(519) 426-8048
1-800-265-8076

SIOUX LOOKOUT
Women in Crisis Sioux/ Hudson/North Ⓦ
(807) 737-1438
1-800-465-3623

STRATFORD
Optimism Place
(519) 271-5550
1-800-265-8598

STURGEON FALLS
Sturgeon Falls Family Resource Centre Ⓦ
(705) 753-1154

SUDBURY
Genevra House
(705) 674-2210
1-800-461-0133

THUNDER BAY
Beendigen House
(807) 622-5101
1-800-465-6847
Community Residence
(807) 625-2430
Faye Peterson Transition House
(807) 623-6600
1-800-465-6971

WAWA
CHADWIC Home Ⓦ
(705) 856-2848
1-800-461-2242

WELLAND
Women's Place
(416) 788-0113

WINCHESTER
Naomi's Family Resource Centre
(613) 774-2838
1-800-267-0395

WINDSOR
Hiatus House Ⓦ
(519) 252-7781
1-800-265-5142

WOODSTOCK
Women's Emergency Centre Inc. Ⓦ
(519) 539-4811
1-800-265-1938

Legal Services

IF YOU WOULD LIKE MORE information about the legal system, there are a number of different sources to turn to. Shelter staff may be able to tell you the best place to get general or detailed legal advice in your area. Here are some resources that can give legal advice or help.

a. Dial-A-Law: is a free program offered by the Law Society. The program gives general legal information on a wide variety of topics on tape-recorded messages you can listen to over the phone. Among the tapes Dial-A-Law offers are: Applying for Legal Aid in Ontario, Battered Women, Custody and Access, Victims of Crime and Police Complaints. There are also tapes on Landlord/Tenant, Immigration, Consumer, Family, Juvenile, Criminal, Wills, Employment, Real Estate and Medical Law.

Dial-A-Law
Metro Toronto: 947-3333
Area code 416: 1-800-387-2920
Area codes 519, 613, 705: 1-800-668-8525.

b. Community Legal Clinics: The Ontario Legal Aid Plan funds community legal clinics all over Ontario.

Community legal clinics offer a wide variety of services such as general legal advice over the telephone; representing people who can't afford a lawyer in some cases; public legal education and referrals to lawyers and community services.

Community legal clinics are listed in the white pages of the telephone book under Legal Aid or in the Yellow Pages under Lawyers-Legal Aid.

c. Lawyer Referral Service:

Metro Toronto: 947-3330
Area codes 416, 519, 613, 705: 1-800-268-8326
Area code 807: 1-800-668-8526

This service will refer you to a lawyer in your area who is familiar with the type of law you need help with. If

you are being assaulted and want legal advice from a lawyer, tell the operator who answers your call that you want a lawyer who has experience working with assaulted women.

You can then call the lawyer and set up an appointment. Make sure you tell the lawyer you were referred by the Lawyer Referral Service and your first half-hour appointment will be free. If you decide to hire the lawyer, be sure to ask them about their fees first.

Many shelters also have lists of lawyers familiar with the law as it deals with assaulted women.

APPENDIX

List of Criminal Charges

THE CRIMINAL CODE includes a lot of different criminal charges. They are listed by sections. The following is a list of some of the more common criminal charges in cases of wife assault. You can ask the police, a justice of the peace or, preferably, a legal clinic for further information about these charges.

Assault (SECTION 269): a physical or verbal threat or attempt to injure a person.

Assault Causing Bodily Harm (SECTION 267): an assault in which you are hurt or injured to the extent that your health and comfort is interfered with.

Aggravated Assault (SECTION 268): an assault in which you are wounded, maimed, disfigured or your life is endangered.

Sexual Assault (SECTION 271): any sexual contact which may include any kind of touching or other sexual behavior including sexual intercourse.

Sexual Assault Causing Bodily Harm (SECTION 272): a sexual assault in which you are injured or hurt to the extent that your health or comfort is interfered with.

Aggravated Sexual Assault (SECTION 273): a sexual assault in which you are wounded, maimed, disfigured or your life in endangered.

Sexual Assault With a Weapon (SECTION 272): a sexual assault in which the person assaulting you carries, uses, or threatens to use a weapon or an imitation of a weapon.

Sexual Assault With Threats to a Third Party (SECTION 272): a sexual assault in which a third person is threatened or receives bodily harm.

Attempted Murder (SECTION 239): a situation in which a person has an intention to kill you but does not succeed.

Kidnapping or Forcible Confinement (SECTION 279): the intent to confine or imprison without consent.

Abduction in Contravention of Custody Order (SECTION 282): the taking, enticing, concealing, detaining, receiving or harboring of a child under the age of 14 years in contravention of the custody provisions of a custody officer.

Abduction Where No Custody Order (SECTION 283): the taking, enticing, concealing, detaining, receiving or harboring of a child under the age of 14 years where no custody order exists.

Uttering Threats (SECTION 264): to knowingly utter, convey or cause any person to receive a threat to cause death or serious bodily harm; to burn, destroy or damage property; to kill, poison or injure an animal or bird that is the property of any person.